

No. 10450

United States
Circuit Court of Appeals
For the Ninth Circuit.

HARRY BRIDGES,

Appellant,

vs.

**I. F. WIXON, as District Director, Immigration
and Naturalization Service, Department of
Justice,**

Appellee.

Transcript of Record

VOLUME I

Pages 1 to 492

**Upon Appeal from the District Court of the United States
for the Northern District of California,
Northern Division**

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Amended Petition for Writ of Habeas Corpus	21
Exhibits:	
A—Warrant of Deportation.....	62
B—Decision and Order of Attorney General Francis Biddle, May 28, 1942	65-110
D—Motion for an Order Directing a Hearing for the Examination of Witnesses with respect to the use of wire tapping	111
E—Memorandum of Decision, Charles B. Sears	134-347
Section I—The History, Nature, Objects and Methods of the Communist Party of the Unit- ed States	157
Section H—Evidence Relating to the Alien's Membership in and Affiliation with the Communist Party and Associated Organi- zations	231

Index	Page
Exhibits—(Continued)	
Section III—Bridges' Membership in the Industrial Workers of the World in 1921 as a Ground for Deportation.....	329
Section IV—Proposed Findings of Fact, Conclusions of Law and Order	337
F—Exceptions to Proposed Findings, Conclusions and Order	348
G—Findings of Fact, Conclusions of Law, Decision and Order of Board of Immigration Appeals, Jan. 3, 1942	367-492
I—Affiliation	376
II—Membership	433
III—Conclusion	489
Conclusions of Law	491
Order	492
H—Findings and Conclusions of the Trial Examiner	493-654
J—Memorandum for the Commissioner of Immigration and Naturalization	655-678
K—Petition of Carol King.....	678-686
L—Order Denying Petition of Carol King	686

Index**Page****Appeal:**

Certificate of Clerk to Transcript of Record on	768
Notice of	759
Order for Transfer of Exhibits on	765
Orders Extending Time to Docket	767, 768
Statement of Points on	7747
Stipulation as to Record on (DC)	764
Stipulation re Exhibits on (CCA)	7743
Supersedeas Bond on	760
Certificate of Clerk to Transcript of Record on Appeal	768
Names and Addresses of Attorneys of Record	1
Notice of Motion and Motion for Issuance of Subpoena duces tecum	716
Affidavit of Richard Gladstein in Support of	719
Notice of Motion and Motion for Order to Take Deposition	701
Affidavit of Carol King in Support of	705
Notice of Appeal	759
Opinion and Order	723
Order for Transfer of Exhibits on Appeal	765
Order Staying Execution and Admitting to Bail	763

Index	Page
Order to Show Cause Why Writ of Habeas Corpus. Should not be Granted.	18
Orders Extending Time to Docket Appeal.	767, 768
Petition for Writ of Habeas Corpus.	2
Amended.	21
Return to Order to Show Cause.	20
Statement of Points on Appeal.	7747
Stipulation as to Record on Appeal (DC).	764
Stipulation re Exhibits (CCA).	7743
Supersedeas Bond.	760
Traverse to Government's Return.	687
Transcript of Proceedings.	770

Exhibits for Alien:

15—(Iden.) Opinion of Charles E. Wyzanski, Jr. re Deportation of Frank Borich, an Alien.	3689
25—(Iden.) Letter, Dec. 19, 1934, George O. Brisbois, Chief of Police, Phoenix, Arizona from D.W. McCormack.	5248
32—Letter on letterhead of International Longshoremen's Assn. dated Nov. 19, 1936, Excerpt.	5916
57—Excerpt from Minutes of General Executive Board of the IWW, Aug. 16-25, 1920.	7414

Index	Page
Exhibits for Government:	
1—Warrant of Arrest, Excerpts	772
6—Membership Card of the Workers Communist Party of America, Ex- cerpt	823
7—Minutes of the Political Commit- tee of the Communist Party of the United States, Sept. 2, 1925, Ex- cerpt	828
8—Minutes of October 12, 1925, Ex- cerpt	832
10—Minutes of December 23, 1925, Excerpt	844
12—Minutes of January 4, 1926, Ex- cerpt	851
14—Minutes, 4/8/26, Excerpt	854
17—Minutes, June 15, 1926, Excerpt	861
18—Minutes, June 29, 1926, Excerpt	868
23—Minutes of Feb. 24, 1937, Excerpt	879
24—Minutes of April 13, 1927, Ex- cerpts	881
25—Minutes of April 21, 1927, Ex- cerpts	883
26—Minutes of April 22, 1927, Ex- cerpt	886
29—Minutes of October 12, 1927, Ex- cerpts	891

Index**Page****Exhibits for Government: (Continued.)**

30—Minutes of October 20, 1927, Excerpts	894
31—Minutes of October 27, 1927, Excerpts	896
32—Minutes of Nov. 2, 1927, Excerpts	897
33—Minutes of Nov. 30, 1927, Excerpts	900
34—Minutes of Jan. 11, 1928, Excerpts	908
35—Minutes of January 18, 1928, Excerpts	910
36—Minutes of June 14, 1928, Excerpts	915
37—Minutes of June 27, 1928, Excerpts	919
38—Minutes of November 14, 1928, Excerpts	922
39—Minutes of November 23, 1928, Excerpts	930
40—Minutes of Meeting of Secretariat, June 27, 1925, Excerpt.....	932
41—Minutes of July 24, 1925, Excerpt	934
43—Minutes of October 27, 1925, Excerpt	939

Index	Page
Exhibits for Government: (Continued.)	
44—Minutes of September 15, 1927, Excerpt	940
45—Minutes of September 16, 1927, Excerpt	941
46—Minutes of September 21, 1927, Excerpt	942
47—Minutes of October 19, 1927, Excerpt	945
57—Resolution adopted by the Com- munist International on the Inter- nal Situation in the American Com- munist Party, Excerpt	958
58—Letter from C. E. Ruthenberg, Executive Secretary of the Party and Copy of Letter from the Com- intern and Profintern in reference to Trade Union Work of the Party	960
59—Release from the National Office of the Workers Communist Party re Convention on Feb. 1, 1928 and attached Agenda, Excerpts	970
63—Letter to Benjamin Gitlow from Robert Minor, June 21, 1929	978
66—Document entitled "Resolution of the Broadening of the TUEL and the Building on an Opposi- tional Bloc in conformity with the CI Decision," Excerpts	988

Index

Page

Exhibits for Government: (Continued.)

- 70—Document entitled "Resolution on Building the Trade Unity League," Excerpt 994
- 75—Certified copies of Statements of Ownership, Management, Circulation, etc. of Daily Worker, Excerpt 1006
- 82—Certified Copy of the Daily Worker Publishing Co. from the Secretary of State containing a number of Documents, Excerpts from 1017
- 91—Pamphlet entitled "The Communist Manifesto" by Karl Marx and Friedrich Engels, Excerpts..... 1031
- 94—Booklet entitled "Theses and Statutes of the Third (Communist) International, adopted by the Second Congress July 17th-August 7th, 1920, Excerpts 1037
- 95—Booklet entitled "Program of the Communist International" copyright in 1929 by Workers Library Publishers, Inc., Excerpts..... 1052
- 96—Manifesto and Program Constitution, Report of the Communist International," Excerpt 1064

Index

Page

Exhibits for Government: (Continued.)

- 99—Magazine entitled "The Workers
Monthly, The Seventh Anniversary,
September, 1926," Excerpts 1061
- 120—Document entitled "Why Com-
munism" by M. J. Olgin, Excerpts 1114
- 127—Booklet "Membership Book No.
3203, Communist Party of the
USA, Section of the Communist
International Name, Jos. Zijic,"
Excerpt 1213
- 128—Pamphlet entitled "Party Or-
ganizer" issued July 1931 by the
Central Committee Communist
Party, U.S.A., Excerpts 1215
- 129—Book entitled "Thesis and Reso-
lutions from the Seventh National
Convention of the Communist
Party of U.S.A.," by Central Com-
mittee Plenum, March 31-April 4,
1930, Excerpts 1216
- 134—Page three of "The Young
Worker," July 23, 1935, "Bridges
and Weinstock Praise Youth Con-
gress" by Howard Rushmore 1434
- 135—Book "From Bryan to Stalin,"
Excerpts 1446

Index

Page

Exhibits for Government: (Continued.)

139—Booklet "Resolutions Seventh Congress of the Communist International," Excerpts	1452
148—Booklet "Abridged Proceedings, Seventh World Congress, the Communist International," Excerpt...	1464
155—Booklet "Handbook of Marxism," Excerpts	1467
156—Booklet "The Communist Party, A Manual on Organization" by J. Peters, Excerpts.	1468
174—Pamphlet "Resolutions of the 10th Convention of the Communist Party, U.S.A., the Democratic Front, the 1938 Elections, Party Building, Excerpt	1481
182—Booklet "State and Revolution" by V. I. Lenin, Excerpts	1486
183—Booklet "Foundations of Leninism," Excerpts	1488
184—Booklet "A Letter to American Workers" by V. I. Lenin, Excerpt	1491
186—Book "Problems of Leninism" by Joseph Stalin, Excerpt	1494
188—Booklet "The Party Organizer," March, 1935, Excerpt	1496

Index**Page****Exhibits for Government: (Continued.)**

189—Pamphlet "Capitalist Stabilization has Ended" Excerpt 1497

191—Booklet "The Great San Francisco General Strike" by William F. Dunne, Excerpt 1500

203—Copy of "Waterfront Worker" dated February, 1933, Vol. 1, No. 2 1561-1589

204—Copy of "Waterfront Worker," June, 1933, Vol. 1, No. 6 1592-1619

205—Copy of "Waterfront Worker," Vol. 1, No. 7, July, 1933: 1621-1640

208—Statement dated Oct. 8, 1940, signed Maurice J. Cannalunga 1852

210—Statement of Maurice Joseph Cannalunga to James A. Robey ... 1870

211—Application for Post Office Box, dated Feb. 6, 1934, Excerpt 1912

216—Statement of Richard Laverne Lovelace, Portland, Oregon, September 12, 1940. 1972

220—Book "The Trade Union Unity League, affiliated to R.I.L.A., its Program, Structure, Methods and History." Excerpts 2077

Index

Page

Exhibits for Government: (Continued.)

- 221—Pamphlet "The Trade Union Unity League Today, Its Structure, Policy, Program and Growth," Excerpts 2080
- 225—Copy of May, 1934, issue of the Communist Magazine, Excerpts... 2085
- 226—Pamphlet "The Platform of Struggle for Urgent Needs of Toilers, Election Platform of the Communist Party, New York State, 1934," Excerpts 2088
- 227—Copy of May, 1938, "The Communist," Excerpts 2088
- 230—Membership Book in the Communist Party of the U.S.A., Excerpts 2091
- 231—Book "What Is Communism" by Earl Browder, Excerpts..... 2093
- 232—Copy of "The Communist," for July, 1929, Excerpts 2097
- 233—Magazine "The Communist International," June 20, 1934, Excerpts 2108
- 236—Magazine "Party Organizer," August, 1934, Excerpts..... 2114

Index

Page

Exhibits for Government: (Continued.)

237—Pamphlet "Out of a Job" by
Earl Browder, Excerpts 2116

241—Pamphlet "Little Brothers of
the Big Labor Fakers" by Wm. Z.
Foster, Excerpts 2118

244—Copy of Article appearing in
the New York Times, July 31, 1935,
written by Harold Denny, Excerpts 2179

247—Copy of "Waterfront Worker,"
July, 1933, Vol. I, No. 8. 2576-2593

248—Copy of "Waterfront Worker,"
Jan. 29, 1934, Vol. II, No. 3. . 2595-2618

249—Copy of "Waterfront Worker,"
Feb. 12, 1934, Vol. II, No. 4. . 2618-2640

250—Copy of "Waterfront Worker,"
Dec. 31, 1934, Vol. II, No. 41. . 2641-2663

251—Copy of "Waterfront Worker,"
Apr. 13, 1936, Vol. IV, No. XV 2666-2692

256—Stenographic Notes made by
Gertrude Segerstrom of James D.
O'Neil Interview 3104

280—"Waterfront Worker," August
15, 1933, Vol I, No. 9. 6142

281—"Waterfront Worker," Sept.
15, 1933 6181

Index Page

Exhibits for Government: (Continued.)

282—(Iden.) Western Worker, Monday, July 16, 1934, Excerpt	6220
283—"Waterfront Worker," Oct. 18, 1933, Vol. I, No. 12	6251
284—(Iden.) "Western Worker," Sept. 18, 1933, Excerpt	6269
285—"Waterfront Worker," March 22, 1934, Vol. II, No. 7	6279
286—"Waterfront Worker," Nov. 19, 1934, Vol. II, No. 25	6326
287—Affidavit of Virgil MacMickle transmitting Certain Diplomas, Excerpts	6639
288—Diploma of Virgil MacMickle received from American School of Naturopathy, Excerpts	6641
293—Agreement re Strike Action, Excerpts	7624

Witnesses for Alien:

Appel, Bernard

—direct	3408
—cross	3420
—redirect	3487

Bernstein, David

—direct	3345
—cross	3359
—redirect	3400
—recross	3405

Index

Page

Witnesses for Alien: (Continued.)

Bridges, Harry R.

—direct	5723, 5755, 5838, 5926, 6003
—cross	6032, 6088, 6201, 6355, 6431
—redirect	6482, 6503
—recross	6554
—surrebuttal, direct	7576
—cross	7600, 7672
—redirect	7709
—(By Presiding Inspector)	7736

Catherman, Charles D.

—direct	3556
---------	------

Craycraft, Rosco G.

—direct	4968, 5073, 5102
—cross	5133, 5192
—redirect	5221, 5242
—recross	5242
—surrebuttal, direct	7518, 7539
—cross	7542
—redirect	7569

Curran, Joseph

—direct	5497
—cross	5545, 5653
—redirect	5687, 5721
—recross	5718, 5721

Dullea, Charles W.

—direct	3277
—cross	3289

Index	Page
Witnesses for Alien: (Continued.)	
Erwin, Claude	
—surrebuttal, direct	7399.
—cross	7425
—recalled, cross	7437
—redirect	7448
Givan, Ruth E.	
—direct	4503
—cross	4507
—redirect	4532, 4542
—recross	4539
Graham, George A.	
—direct	4177, 4205
—cross	4234
Heiner, Fred	
—direct	5307
—cross	5351, 5376
—redirect	5395
—recross	5399
Horn, John S.	
—direct	3598
—cross	3644
—redirect	3658
Hynes, William F.	
—direct	4236, 4285, 4386
Imper, Thomas	
—direct	3731
—cross	3736
—redirect	3768

Witnesses for Alien: (Continued.)

Jackman, Cole

—direct	5402
—cross	5410
—redirect	5426

Kagel, Sam

—direct	4862, 4936
—cross	4946

Katzer, Emma

—direct	3781
—cross	3787

Lord, William P.

—direct	7188
—cross	7198

Lowry, Jeannine

—direct	3789
—cross	3800

MacGregor, Robert M.

—direct	4083
—cross	4089, 4122
—redirect	4162
—recross	4171

MacMickle, Dr. Virgil

—direct	3811, 3866
—voir dire	3879
—direct	3895
—cross	3897, 3955, 4118
—redirect	4015
—recross	4027, 4070

Index	Page
Witnesses for Alien: (Continued.)	
Mallary, Benjamin E.	
—direct	6542
—cross	6549
Melnikow, Henry P.	
—direct	6564
—cross	6580
—redirect	6603
Meyer, Lee A.	
—direct	5474
—cross	5492
Morse, Wayne L.	
—direct	5033
—cross	5058
Schmidt, Henry A.	
—direct	4545
—cross	4581, 4620, 4700, 4774
—redirect	4721, 4825
—recross	4845
—recalled, redirect	5285, 5304
—recross	5291
Shoemaker, Ray D.	
—direct	3493, 3512
—Surrebuttal, direct	7497
—cross	7499
—redirect	7517
—recross	7518

Index

Page

Witnesses for Alien: (Continued.)

Wales, Morris F.

—direct 4495

—cross 4502

Yoeman, Charles

—direct 4431

—cross 4449, 4464

Young, Louis E.

—surrebuttal, direct 7461

—cross 7475

—redirect 7495

Witnesses for Government:

Barlow, Lee

—rebuttal, direct 7377

—cross 7378

—redirect 7392

—recross 7392

Black, Daniel B.

—direct 1909

—cross 1914

Bridges, Harry Renton

—direct 778

—recalled, direct 791

Index.	Page
Witnesses for Government: (Continued.)	
Cannalunga, Maurice J.	
—direct	1769
—cross	1816, 1838
—redirect	1847
—recross	1875
—rebuttal, direct	6648
—cross	6692, 6721, 6816, 6926, 7022, 7455
—redirect	7096
—recross	7101
Chase, Ezra	
—direct	1198, 1135
—cross	1237, 1333
Dickstein, Abraham	
—rebuttal, direct	7240
—cross	7246
Diner, Sam	
—direct	1536
—cross	1656, 1683
Eigner, William A.	
—rebuttal, direct	7152
Ernest, F. J. M.	
—rebuttal, direct	6606
—cross	6609

Index

Page

Witnesses for Government: (Continued.)

Farmer, J. W.

—rebuttal, direct	7110
—cross	7113
—redirect	7150

Frankensteen, Richard T.

—rebuttal, direct	7643
-------------------------	------

Gitlow, Benjamin

—direct	811, 830, 899, 969, 1012, 1071
---------------	--------------------------------

Hailey, Foster

—rebuttal, direct	7714
—cross	7727
—redirect	7730

Honig, Nat

—direct	2064, 2125
—cross	2189, 2201, 2289
—redirect	2317

Innes, Peter J.

—direct	2883, 2891
—cross	2902, 2970
—redirect	2980

Kelley, Amos Floyd

—direct	1917
—cross	1921, 1948

Laurence, Thomas

—direct	1704
—cross	1717, 1753
—redirect	1759

Index

Page

Witnesses for Government: (Continued.)

Lovelace, Dawn

—direct	1949, 1987, 1994
—cross	1998, 2051
—redirect	2041, 2062

Lundeberg, Harry

—rebuttal, direct	7260
—cross	7291, 7357
—redirect	7370
—recross	7371

Madala, John L.

—rebuttal, direct	7161
—cross	7168, 7235
—redirect	7239

McCuistion, William C.

—direct	2562, 2717
—cross	2722, 2804
—redirect	2868
—recross	2877

Mullany, Ethel

—direct	3488
---------------	------

O'Neil, James D.

—direct	2981, 3085
—cross	3088
—redirect	3096
—recross	3101

Witnesses for Government: (Continued.)

Reese, Algia E.

—direct 3158

—cross 3179

Rushmore, Howard

—direct 1421, 1483

—cross 1508

Ryan, Frank

—direct 1760

—cross 1768

Schnering, Farrell

—direct 1148, 1208

—cross 1221

—redirect 1235

Schofield, Lemuel B.

—direct 5255

—cross 5259

—redirect 5282

—recross 5283

Segerstrom, Gertrude

—direct 3102

—cross 3116

—recalled, direct 3156

Shirley, Lawrence F.

—rebuttal, direct 7158

Index

Page

Witnesses for Government: (Continued.)

St. Clair, Richard A.

—direct	2401
—cross	2421, 2444
—redirect	2508

Thompson, John Oliver

—direct	2509, 2529
—cross	2533

Van Syckle, George B.

—direct	2046
---------------	------

Wilmot, Robert Patrick

—direct	2324
—cross	2349
—redirect	2394
—recross	2398

Proceedings in U. S. C. C. A., Ninth Circuit 7765

Order of submission 7765

Notice of motion of Communist Party of the
U. S. A. for leave to intervene; motion, petition
and proposed pleading 7767

Order denying motion for leave to intervene 7769

Order directing filing of opinions and decree 7769

Opinion, Wilbur, J. 7770

Concurring opinion, Stephens, J. 7793

Dissenting opinion, Healy, J. 7794

Decree 7810

Order denying petition for rehearing, etc. 7811

Opinion, Stephens, J., upon petition for rehearing 7811

Order staying mandate 7813

Clerk's certificate 7814

Order amending opinion on petition for rehear-
ing 7815

5
NAMES AND ADDRESSES OF ATTORNEYS
GLADSTEIN, GROSSMAN, SAWYER &
EDISES,

Mills Tower,
San Francisco, Calif.

Attorneys for Appellant

FRANK J. HENNESSY, Esq.,

U. S. Attorney,
San Francisco, Calif.

Attorneys for Appellee

In the United States District Court for the Northern District of California, Southern Division

No. 23673 W

In the Matter of the Petition of

HARRY BRIDGES

for a Writ of Habeas Corpus

PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable the Judges of the United States District Court for the Northern District of California, Southern Division:

The petition of Harry Bridges respectfully shows to this honorable court and alleges:

I.

Petitioner is unlawfully detained, restrained of his liberty, and imprisoned by Francis A. Biddle, as Attorney General of the United States of America, and by his agents, servants, officers and employees, including I. F. Wixon, as District Director of Immigration and Naturalization at San Francisco, California, and the agents, servants, officers and employees of said Wixon, at and in the City and County of San Francisco, State of California.

II.

Said detention, restraint and imprisonment are and purport to be by virtue of a certain warrant of deportation, ordering the deportation of petitioner to the country of Australia, a copy of which

warrant is filed herewith, marked Exhibit A, and by this [1*] reference incorporated herein.

III.

Said warrant of deportation was issued pursuant to a certain decision and order made by said Biddle on the twenty-eighth day of May, 1942. A copy of said decision and order is filed herewith, marked Exhibit B, and by this reference incorporated herein.

IV.

On or about February 12, 1941, a certain warrant was issued by the Attorney General of the United States for the arrest of petitioner. Pursuant to said warrant, a hearing was held in the City and County of San Francisco, State of California, from March 31, 1941, to June 12, 1941, before Charles B. Sears as Presiding Inspector. A copy of the transcript of proceedings at said hearing is contained in seven (7) bound books, submitted herewith, and marked Exhibit C. By this reference said exhibit is incorporated herein.

The said warrant for the arrest of petitioner appears at pp. 2-3 of Book I of said Exhibit C and also appears as Government's Exhibit 1 in said proceedings. Reference is hereby made to said warrant, and by said reference incorporated herein.

A total of 359 exhibits were admitted in said proceedings, 345 of which were admitted in evidence and the remaining 14 admitted for identifi-

*Page numbering appearing at foot of page of original certified Transcript of Record.

cation. Petitioner does not have copies of said exhibits, and for that reason is unable to submit the same herewith. All of said exhibits are in the possession of said Attorney General, his agents, servants, officers and employees. Petitioner requests that said Attorney General, his agents, servants, officers and employees, be required to submit said exhibits to this honorable court at the time of and with the filing of return or other appearance of the Attorney General herein, and that said exhibits shall thereupon be deemed incorporated herein. [2]

V.

On or about September 2, 1941, petitioner caused to be brought before said Charles B. Sears, as Presiding Inspector, a motion for an order directing a hearing for the examination of witnesses with respect to the use, by agents of the Federal Bureau of Investigation, the Department of Justice, and the said Attorney General, of wire-tapping against petitioner in violation of Sec. 605 of the Federal Communications Act (47 USC sec. 605). No copy of the motion, and of the affidavits submitted in support thereof, are in the possession of the petitioner or his attorneys in San Francisco. Copies thereof are in the possession of Carol King, one of petitioner's attorneys, whose office is in New York City, New York. Neither petitioner nor his San Francisco attorneys has had time or opportunity within which to obtain from said Carol King copies of the said motion and affidavit. The said Carol King has been requested to forward

forthwith to petitioner's San Francisco attorneys copies of said motion and affidavits, and petitioner prays this honorable court to permit said copies to be filed within a reasonable time, as Exhibit D; and that, upon the filing of said Exhibit D, the same may be deemed to be incorporated by reference herein.

On or about the nineteenth day of September, 1941, said motion was presented to and argued before the said Presiding Inspector, and no transcript or other written record of said proceedings was taken. On or about the twenty-fifth day of September, 1941, the said motion was denied in a memorandum of decision made and issued by the said Presiding Inspector. Said memorandum appears as an appendix at pp. 182-185 of Exhibit E, which is hereinafter more particularly described.

On or about the 26th day of September, 1941, said Presiding Inspector did make, render and issue a certain memorandum of decision, together with his proposed findings of fact, proposed [3] conclusions of law, and proposed order, all of which are contained within the document herewith filed as Exhibit E.

VI.

On or about the twenty-ninth day of October, 1941, petitioner caused to be filed before the Board of Immigration Appeals of the Immigration and Naturalization Service, Department of Justice, and with the said Attorney General, certain exceptions to the said proposed findings of fact, proposed conclusions of law, and proposed order, of the Pre-

siding Inspector. A true copy of said exceptions is submitted herewith, marked Exhibit F, and by this reference incorporated herein.

VII.

Thereafter, briefs on behalf of petitioner and on behalf of said Attorney General and the said Department of Justice were submitted to said Board of Immigration Appeals, and on the twenty-fourth day of November, 1941, a hearing and oral argument took place before the said Board in Washington, D. C. On or about the third day of January, 1942, the said Board made, issued and rendered its findings of fact, conclusions of law, decision and order, cancelling the aforementioned warrant of arrest and closing the said proceedings against petitioner, and providing that execution of said order be stayed pending further order of the Attorney General or of said Board. A copy of said findings of fact, conclusions of law, decision and order of the Board is filed herewith, marked Exhibit G, and by this reference incorporated herein.

VIII.

On or about the twenty-eighth day of May, 1942, said Attorney General made, rendered and issued certain findings of fact, conclusions of law, decision and order (the same being the aforementioned Exhibit B) ordering the deportation of petitioner to Australia as aforesaid. Said findings of fact, conclusions of law, decision and order of the Attorney General is the sole basis for [4] the issuance of

said warrant of deportation under which petitioner is held, detained, restrained of his liberty, and imprisoned."

IX.

The cause or pretense of petitioner's restraint, detention and imprisonment, according to the best knowledge of petitioner, and according to the best of petitioner's information and belief, is as aforesaid. Petitioner is not detained, restrained or imprisoned by virtue of any process or mandate issued by any court of the United States or by any judge thereof; nor is he committed, detained, restrained of his liberty or imprisoned by virtue of a final judgment or decree of any competent tribunal made in a special proceeding instituted for any cause or by virtue of execution or process issued upon any judgment, decree or final order other than as aforesaid.

X.

Petitioner entered the United States of America lawfully in the year 1920, subsequently married, and has one American-born child. Petitioner has resided in the United States continuously since the said date of his entry, and has not been convicted at any time for the commission of any crime under federal or state law, with the exception of minor traffic offenses involving the payment of small fines.

XI.

The said detention, restraint and imprisonment

of petitioner are and each of them is unlawful and illegal for each of the following reasons:

a. The evidence contained in the record of said proceedings (to wit: Exhibit C) was and is insufficient as a matter of law to support the Attorney General's findings of fact, conclusions of law, decision and order, or the said warrant for the deportation of petitioner or the said proposed findings of fact, proposed conclusions of law, and proposed order of the said [5] Presiding Inspector.

b. The said evidence was and is sufficient as a matter of law to support the said findings of fact, conclusions of law, decision and order of the Board of Immigration Appeals.

c. The action of the Attorney General reversing the said findings of fact, conclusions of law, decision and order of the Board of Immigration Appeals was and is erroneous and void for each of the following reasons:

(1) In that the Attorney General did not find that the said findings of fact, conclusions of law, decision and order of the said Board was unsupported by the evidence;

(2) In that it appears from the face of the said findings of fact, conclusions of law, decision and order of the said Attorney General that the findings of fact, conclusions of law, decision and order of the Board of Immigration Appeals was and is supported by the evidence in said record.

d. The action of the Attorney General reversing the said findings of fact, conclusions of law,

decision and order of the Board of Immigration Appeals was and is erroneous and void in that the Attorney General's findings of fact, conclusions of law, decision and order is based upon:

(1) Witnesses whose testimony was rejected as unworthy of belief by the Board of Immigration Appeals;

(2) The testimony of one James O'Neil, which testimony was not and is not legally evidence upon which an order or warrant of deportation can be based in whole or in part;

(3) The testimony of one Harry Lundeborg, an admitted enemy of petitioner, whose testimony was inherently improbable, internally inconsistent, equivocal, evasive and untruthful, and directly in contradiction to prior statements given by the said Lundeborg to representatives of the United States Government, and by reason thereof is not legally [6] evidence upon which an order or warrant of deportation can be based in whole or in part.

(4) The testimony, taken as a whole, of certain witnesses whose individual testimony was not accepted by the Attorney-General, or by the Presiding Inspector, as establishing the facts to which they testified.

(5) Certain testimony concerning a strike at the plant of the North American Aviation Corporation, which was not and is not legally evidence upon which an order or warrant of deportation can be based in whole or in part.

(6) Certain evidence concerning a mimeo-

graphed paper called the Waterfront Worker, which testimony was not and is not legally evidence upon which an order or warrant of deportation can be based in whole or in part.

XII.

Each of the facts alleged in the paragraph immediately preceding serves to deny and deprive petitioner of due process of law, in violation of the Fifth Amendment to the Constitution of the United States; and the said detention, restraint and imprisonment of petitioner, and the said Findings of Fact, Conclusions of Law, Decision, and Order of the Attorney General, and the said warrant of deportation, do and each of them does, for the reasons contained in the paragraph immediately preceding, serves to deny and deprive petitioner of due process of law in violation of the Fifth Amendment to the Constitution of the United States.

XIII.

The said warrant of arrest, the entire said proceeding to deport petitioner, and other activities of the Government to achieve that purpose, the said Findings of Fact, Conclusions of Law, Decision, and Order of the Attorney General, the said [7] warrant of deportation, and the said detention, restraint and imprisonment of petitioner, do and each of them does serve to deny and deprive petitioner of due process of law, in violation of the Fifth Amendment to the Constitution of the United States, in that:

A) All of the issues involved in said proceeding, except the question of membership in the Industrial Workers of the World, had theretofore been decided, to-wit: by the decision, on or about January 8, 1940, of Frances Perkins as Secretary of Labor of the United States, adopting the Findings and Conclusions of James M. Landis as Trial Examiner, in a proceeding entitled "In the Matter of Harry R. Bridges", a copy of which Findings and Conclusions is filed herewith, marked Exhibit H, and by this reference incorporated herein; and by reason thereof the said issues decided in said first proceeding became, were, and are res judicata, and became, were, and are final and conclusive administrative determinations as to all issues, except the question of said I.W.W. membership, involved in the said second proceeding before Presiding Inspector Sears.

B) Petitioner was subjected to double jeopardy.

C) All the activities of the Government, including said second hearing, serve to deny petitioner the equal protection of the law.

D) The 1940 amendment to the Deportation Law pursuant to which said second proceeding was conducted (Act of October 16, 1918, as amended by Act of June 5, 1920 and Act of June 28, 1940, 8 U.S.C. 137), as applied to petitioner, was and is an ex post facto law, in violation of Article I, Section 9, of the Constitution of the United States.

E) Petitioner was denied adequate notice of the charges contained in said warrant of arrest.

and was denied adequate opportunity to prepare his defense to said charges. [8]

F) Petitioner was denied the right to examine the prior statements of witnesses produced against petitioner, which statements were under the control of the representatives of the Attorney General who presented the evidence against Petitioner at said second hearing.

G) Petitioner was denied the equal protection of the laws insofar as the warrant for his arrest, the warrant for his deportation, and the Findings of Fact, Conclusions of Law, Decision, and Order of the Attorney General are based upon membership in or affiliation with the Marine Workers Industrial Union, and petitioner was denied an opportunity to prove that no other deportation proceedings have been brought on such grounds for more than seven years.

H) Petitioner's motion for an order directing an examination of witnesses with respect to the use of wire tapping against petitioner in connection with the preparation of the said second hearing, and/or the use made of intercepted telephone messages as a result of said wire tapping, was denied.

XIV.

The said detention, restraint and imprisonment of petitioner is unlawful and illegal, for the reason that petitioner has been deprived of his right to freedom of speech, freedom of press, the right peaceably to assemble and to petition the Government for a redress of grievances, in violation of

the first amendment to the Constitution of the United States; and has been deprived of liberty and property without due process of law in violation of the fifth amendment to the Constitution of the United States, in that:

A) The said statute as written deprives petitioner of said rights.

B) The said statute, as construed and applied to petitioner, would deport petitioner for membership in or affiliation with a proscribed organization which has not been shown to believe in or advocate the immediate forcible overthrow of the government [9] of the United States.

C) Petitioner has been ordered deported for no more than limited cooperation for legitimate objectives, as constituting affiliation under said statute.

D) Petitioner has been ordered deported for membership in or affiliation with an organization that distributes, or has in its possession for distribution, proscribed literature, without any showing that petitioner was in any way connected with such distribution or that petitioner had knowledge of such literature.

E) The statute requires relinquishment of the right to belong to organizations proscribed by the statute, thereby imposing conditions on the right of an alien to remain in the United States which are in violation of said constitutional rights.

F) The statute as construed and applied against petitioner does not provide a sufficient rule or standard of conduct.

XV.

The said detention, restraint and imprisonment of petitioner is unlawful and illegal for each of the following reasons:

A) The finding of affiliation with the Marine Workers Industrial Union and the Communist Party is not warranted by the statutory use of that term nor by its judicial construction.

B) Petitioner was denied a hearing for the examination of witnesses with respect to:

(1) The use of wire-tapping in connection with the preparation or presentation of evidence in the 1941 hearing of this case; and

(2) The use made either directly or indirectly of intercepted telephone messages and facts ascertained as a result of such wire-tapping.

C) The evidence does not establish that the petitioner at any time had knowledge that the Marine Workers Industrial Union:

(1) Was a part of the Communist Party, or dominated or controlled by it; or [10]

(2) Was at any time an organization, association, society or group proscribed by the said statute.

D) The evidence does not establish that the Marine Workers Industrial Union was a part of the Communist Party, dominated or controlled by it, within the meaning of the said statute.

E) The evidence does not establish that the Marine Workers Industrial Union at any time was an

organization, association, society or group prescribed by the said statute.

F) Petitioner was denied equal protection of the laws, in violation of the fifth amendment to the Constitution of the United States, for the reason that no other deportation proceedings have been brought for more than seven years based upon membership in or affiliation with the Marine Workers Industrial Union.

G) All of the aforementioned conduct of the Attorney General was arbitrary, capricious, and in disregard of the evidence, and constitutes an illegal abuse of his discretion.

H) The entire said second proceeding against petitioner was not a bona fide investigation to ascertain the facts.

XVI.

Jurisdiction is conferred on this court by 28 USC sec. 452, giving the judges of the District Courts power to grant habeas corpus for the purpose of an inquiry into the cause of restraint of liberty.

XVII.

Petitioner does not have extra copies of the exhibits referred to herein, and for that reason is unable to serve such copies upon the said Attorney General or the said District Director of Immigration and Naturalization at San Francisco. Said exhibits are numerous and extremely lengthy; and it would therefore be burdensome and expensive for petitioner to prepare copies of said exhibits;

and it would require many weeks before copies of all said exhibits could be prepared. Copies of each and all of the [11] said exhibits are in the possession or under the immediate control of the said Attorney General and the said District Director. Petitioner therefore requests that this honorable court direct that service of copies of the within petition may be made without service of copies of said exhibits.

Now, Wherefore, petitioner prays for the issuance of an order, directed to the said Attorney General and the said District Director, to show cause why the writ of habeas corpus should not be granted petitioner; and that, upon the hearing and disposition of said order, this honorable court grant and issue to petitioner the writ of habeas corpus, and order the discharge from custody of petitioner, restoring petitioner to his liberty; and that this honorable court issue its order that, pending further order of this court, the custody of said Harry Bridges shall not be disturbed nor transferred, nor shall he be taken out of the jurisdiction of this court, except in accordance with the said order or the further order of this court; and that the court issue its order that, pending the further order of this court, the said Harry Bridges be forthwith admitted to bail in a sum

to be fixed by the court; and for such other and further relief as may be just and proper in the premises.

HARRY BRIDGES

CAROL KING

100 Fifth Avenue, New York City
**GLADSTEIN, GROSSMAN, MARGOLIS &
SAWYER**

560 Mills Tower, San Francisco
Attorneys for Petitioner [12]

State of California

City and County of San Francisco—ss.

Harry Bridges, being first duly sworn, deposes and says: that he is the petitioner named in the foregoing petition; that he has read the same and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to such matters, he believes it to be true.

HARRY BRIDGES

Subscribed and sworn to before me this 2nd day of June, 1942.

[Seal]

DOROTHY H. McLENNAN

Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed June 2, 1942. [13]

[Title of District Court and Cause.]

**ORDER TO SHOW CAUSE WHY WRIT OF
HABEAS CORPUS SHOULD NOT BE
GRANTED**

Upon reading and filing the verified petition of Harry Bridges for a writ of Habeas corpus, and it appearing to the court from said petition that said Harry Bridges is illegally detained, restrained of his liberty, and imprisoned by Francis A. Biddle as Attorney General of the United States, his agents, servants, officers and employees, including I. F. Wixon, District Director of Immigration and Naturalization at San Francisco, California, his agents, servants, officers and employees; and good cause appearing therefor:

It Is Hereby Ordered that the said Francis A. Biddle and the said I. F. Wixon be and appear before the above entitled court, in the Department of the Hon. Martin I. Welsh, Judge thereof, on the 8th day of June, 1942, at 10 o'clock a. m. thereof, or as soon thereafter as council may be heard, to show cause, if any [14] they have, why the writ of habeas corpus should not issue as prayed for in said petition;

And It Is Further Ordered that, at the said time and place, the said Francis A. Biddle and the said I. F. Wixon, their agents, servants, officers and employees, produce to the said court all of the exhibits in their possession or under their control, admitted in evidence or for identification in those certain proceedings before Charles Brown

Sears as Presiding Inspector, entitled "In the Matter of Harry Renton Bridges", File No. 55973/217, Immigration and Naturalization Service, Department of Justice;

And It Is Further Ordered that, pending further order of this court, the custody of said Harry Bridges shall not be disturbed or transferred, nor shall he be taken out of the jurisdiction of this court, except in accordance with this order or the further order of the court;

And It is Further Ordered that, pending the further order of this court, the said Harry Bridges be, and he hereby is, at the suggestion of the District Director of Immigration, forthwith admitted to bail in the sum of \$3000;

And It Is Further Ordered that on or before the 3rd day of June, 1942, a copy of this Order, together with a copy of the aforementioned Petition, exclusive of the exhibits filed therewith, be served personally on the said I. F. Wixon, and on the said Francis A. Biddle by leaving the said copies with the office of Frank J. Hennessy as United States Attorney for the Northern District of California.

Dated: June 2, 1942.

A. F. ST. SURE

District Judge

[Endorsed]: Filed June 2, 1942. [15]

[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE

Comes now I. F. Wixon, as District Director, Immigration and Naturalization Service, United States Department of Justice at San Francisco, California, through August Kuckein, as Inspector in Charge, Legal Division, of the United States Immigration and Naturalization Service at San Francisco, California, regularly assigned hereunto by said District Director, of Immigration and Naturalization, and for cause why a writ of habeas corpus should not issue herein, shows:

I.

That the petitioner herein is detained by your respondent I. F. Wixon, as District Director, Immigration and Naturalization Service, United States Department of Justice, at San Francisco, California, under and by virtue of a warrant of deportation duly and regularly issued by the Attorney General of the United States after a hearing duly and regularly held before a Presiding Inspector [16] of the Immigration and Naturalization Service.

II.

That a true copy of said warrant of deportation and the original record of the entire proceedings pertaining thereto are submitted herewith and marked Exhibit "A" and made a part hereof.

Wherefore, respondent prays that the petition for writ of habeas corpus herein be denied.

I. F. Wixon

21

Dated: This 22nd day of June, 1942.

AUGUST KUKEIN,

Inspector in Charge, Legal Division as aforesaid,
hereunto authorized for and on behalf of I. F.
Wixon, District Director, United States Immi-
gration and Naturalization Service at San
Francisco, California.

[Endorsed]: Filed June 22, 1942. [17]

[Title of District Court and Cause.]

AMENDED PETITION FOR WRIT OF
HABEAS CORPUS

To the Honorable the Judges of the United States
District Court for the Northern District of
California, Southern Division:

The amended petition of Harry Bridges respect-
fully shows to this honorable court and alleges:

I.

Petitioner is unlawfully detained, restrained of
his liberty, and imprisoned by Francis A. Biddle,
as Attorney General of the United States of
America, and by his agents, servants, officers and
employees, including I. F. Wixon, as District Di-
rector of Immigration and Naturalization at San
Francisco, California, and the agents, servants, offi-
cers and employees of said Wixon, at and in the
City and County of San Francisco, State of Cali-
fornia. [18]

II.

Said detention, restraint and imprisonment are and purport to be by virtue of a certain warrant of deportation, ordering the deportation of petitioner to the country of Australia. A copy of said warrant was filed with the original petition for a writ of habeas corpus herein, marked Exhibit "A", and by reference incorporated therein.

III.

Said warrant of deportation was issued pursuant to a certain decision and order made by said Biddle on the 28th day of May, 1942. A copy of said decision and order was filed with the original petition for writ of habeas corpus herein, marked Exhibit "B", and by reference incorporated therein.

IV.

On or about the 12th day of February, 1941, a certain warrant was issued by the Attorney General of the United States for the arrest of petitioner. Pursuant to said warrant, a hearing was held in the City and County of San Francisco, State of California, from March 31, 1941, to June 12, 1941, before Charles B. Sears as Presiding Inspector. A copy of the transcript of proceedings at said hearing is contained in seven (7) bound books, submitted with the original petition for writ of habeas corpus filed herein, marked Exhibit "C", and by reference incorporated therein.

The said warrant for the arrest of petitioner appears at pp. 2-3 of Book I of said Exhibit "C" and also appears as Government's Exhibit "1" in said

proceedings. Reference is hereby made to said warrant, and by said reference incorporated herein.

A total of 359 exhibits were admitted in said proceedings, 345 of which were admitted in evidence and the remaining 14 admitted for identification. Petitioner does not have copies of said exhibits, and for that reason is unable to submit the same herewith. All of said exhibits were in the possession of said Attorney General, [19] his agents, servants, officers and employees. Petitioner requested that said Attorney General, his agents, servants, officers and employees, be required to submit said exhibits to this honorable court at the time of and with the filing of return or other appearance of the Attorney General herein, and that said exhibits shall thereupon be deemed incorporated herein. Since the filing of the original petition for writ of habeas corpus, said exhibits have been filed herein.

V.

On or about September 2, 1941, petitioner caused to be brought before said Charles B. Sears, as Presiding Inspector, a motion for an order directing a hearing for the examination of witnesses with respect to the use, by agents of the Federal Bureau of Investigation, the Department of Justice, and the said Attorney General, of wiretapping against petitioner in violation of Section 605 of the Federal Communications Act (47 USC 605). Copies thereof have been filed, since the filing of the said original petition for writ of habeas corpus herein, as Exhibit "D" to said original petition, and by reference have been incorporated in said petition.

On or about the 19th day of September, 1941, said motion was presented to and argued before the said Presiding Inspector. No transcript or other written record of said proceedings was taken. On or about the 25th day of September, 1941, the said motion was denied in a memorandum of decision made and issued by the said Presiding Inspector. Said memorandum appears as an appendix at pp. 182-185 of Exhibit "E", which is hereinafter more particularly described.

On or about the 26th day of September, 1941, said Presiding Inspector did make, render and issue a certain memorandum of decision, together with his proposed findings of fact, proposed conclusions of law, and proposed order, all of which are contained with- [20] in the document filed as Exhibit "E" to the said original petition for writ of habeas corpus herein, and therein incorporated.

VI.

On or about the 29th day of October, 1941, petitioner caused to be filed before the Board of Immigration Appeals of the Immigration and Naturalization Service, Department of Justice, and with the said Attorney General, certain exceptions to the said proposed findings of fact, proposed conclusions of law, and proposed order, of the Presiding Inspector. A true copy of said exceptions was submitted with the original petition for writ of habeas corpus herein, marked Exhibit "F", and by reference incorporated therein.

VII.

Thereafter, briefs on behalf of petitioner and on behalf of said Attorney General and the said Department of Justice were submitted to said Board of Immigration Appeals, and on the 24th day of November, 1941, a hearing and oral argument took place before the said Board in Washington, D. C. On or about the 3rd day of January, 1942, the said Board made, issued and rendered its findings of fact, conclusions of law, decision and order, canceling the aforementioned warrant of arrest and closing the said proceedings against petitioner, and providing that execution of said order be stayed pending further order of the Attorney General or of said Board. A copy of said findings of fact, conclusions of law, decision and order of the Board was filed with the said original petition for writ of habeas corpus herein, marked Exhibit "G" to the said original petition, and by reference incorporated therein.

VIII.

On or about the 28th day of May, 1942, said Attorney General made, rendered and issued certain findings of fact, conclusions of law, decision and order (the same being the aforementioned Exhibit "B") ordering the deportation of petitioner to Australia as aforesaid. Said findings of fact, conclusions of law, decision and [21] order of the Attorney General is the sole basis for the issuance of said warrant of deportation under which petitioner is held, detained, restrained of his liberty, and imprisoned.

IX.

On the 29th day of May, 1942, Major Lemuel B. Schofield, Special Assistant to the Attorney General in charge of the Immigration and Naturalization Service, by telephone communications with petitioner's San Francisco attorneys of record, demanded that petitioner surrender himself immediately, and in any event not later than June 1, 1942. Petitioner's said attorneys informed said Schofield of their desire and intention to prepare and file with the Attorney General an application for a hearing or rehearing of the said cause, and if said application failed of its purpose, a petition for a writ of habeas corpus in the District Court of the United States, and requested reasonable time therefor. Said Schofield refused to grant such time, and petitioner is informed and believes and therefore alleges that said Schofield caused to be wired to the office of the said I. F. Wixon at San Francisco, California, a telegraphic warrant of deportation, and said Wixon was instructed to take petitioner into custody immediately. The intervention of the holidays on May 30th and May 31st prevented said Wixon from taking petitioner into custody on those days. In great haste and without adequate time for proper research and preparation, petitioner's attorneys prepared, on said holidays, the original petition for a writ of habeas corpus herein, and an application to the Attorney General for a hearing or rehearing of said cause. The latter was filed with the office of the Attorney General on June 1, 1942, by petitioner's New York attorney of record.

who made efforts to secure additional time before petitioner should be required to surrender, so that the said application to the Attorney General for a hearing or rehearing could be filed, presented, argued, and ruled on by the said Attorney General, and if the said application were [22] denied, the said petition for a writ of habeas corpus could be properly and adequately prepared. Said efforts included requests made to W. W. Brown, the then Chief of the Warrant branch of the Immigration and Naturalization Service, who by law was authorized to fix the date of surrender, and to the said Schofield, and also a request transmitted to the Attorney General. Except that petitioner's attorneys were given to understand that no steps would be taken by the said Wixon to take petitioner into custody until June 2, all of said requests failed of their purpose and, under threat of immediate arrest, petitioner was required to and did surrender himself to the said Wixon on the morning of June 2, 1942.

X.

The cause or pretense of petitioner's restraint, detention and imprisonment, according to the best knowledge of petitioner, and according to the best of petitioner's information and belief, is as aforesaid. Petitioner is not detained, restrained, or imprisoned by virtue of any process or mandate issued by any court of the United States or by any judge thereof, nor is he committed, detained, restrained of his liberty or imprisoned by virtue of

a final judgment or decree of any competent tribunal made in a special proceeding instituted for any cause or by virtue of execution or process issued upon any judgment, decree or final order other than as aforesaid.

XI.

Petitioner entered the United States of America lawfully in the year 1920, subsequently married an American citizen, and has one American-born child. Petitioner has resided in the United States continuously since the said date of his entry, and has not been convicted at any time for the commission of any crime under Federal or state law, with the exception of minor traffic offenses involving the payment of small fines. [23]

XII.

The entire said proceedings to deport petitioner and other activities hereinafter described to achieve that purpose, the said findings of fact, conclusions of law, decision and order of the Attorney General, the said warrant of deportation, and the said detention, restraint, and imprisonment of said petitioner, do and each of them does serve to deny petitioner the equal protection of the laws, in violation of the 5th Amendment to the Constitution of the United States in that:

Beginning with 1934, the Immigration and Naturalization Service of the Department of Labor has repeatedly conducted investigations to determine whether petitioner was subject to deportation on the charge that he was a member or affiliate of

the Communist Party. The results of said investigations were summarized in a Labor Department Memorandum, a copy of which is herewith filed marked "Exhibit 'J'" and by this reference incorporated herein. Said Memorandum was prepared and signed in 1936 by W. W. Brown, legal advisor, Thomas S. Finucane, member of the Board of Review, and Joseph Savoretti, chief examiner of the Legal Branch, and states that petitioner's "deportation was then [at the time of the Pacific Coast maritime strike in 1934] and later urgently sought by the interests which he had antagonized," and that petitioner's "record has been exhaustively investigated". Said report concluded as follows:

"In short, whenever any legal ground for the deportation of Bridges has been brought to the attention of the Department of Labor, it has been investigated, but invariably it has been found that he was in the clear, and that his status as an immigrant was entirely regular."

The said 1936 Memorandum referred to a report of the District Director of Immigration and Naturalization at San Francisco, dated February 2, 1936, which stated as follows:

"The investigation of the alien referred to above [Bridges] has failed to show that he is in any manner connected with the Communist Party or with any radical organization." [24]

*There will be no Exhibit "I" of this petition.

The said District Director reported, as set forth in said Labor Department Memorandum, that the Crime Prevention Detail of the San Francisco Police Department had "been unable to date to obtain any evidence that the Alien [Bridges] has ever been a member of the Communist Party or in any manner directly affiliated with or a member of any radical organization." Even a rumor that Bridges had a criminal record in Australia was investigated, with the result that the American consul at Melbourne reported on November 5, 1934, "that the police authorities at Melbourne had no record of Bridges."

On February 28, 1936, Daniel W. MacCormack, the then Commissioner of the Immigration and Naturalization Service, testified as follows concerning petitioner before a sub-committee of the House Appropriations Committee, 74th Congress, 2d Session:

"The facts, however, are that there is no shred of evidence in our files, or in the files of the San Francisco Police Department, to indicate that he is in any way subject to the provisions of the immigration law because of his radical views."

Under date of March 2, 1938, a warrant was issued for the arrest of petitioner upon the ground that it appeared that he was subject to deportation pursuant to the provisions of Section 2 of the Act of October 16, 1918 as amended by the Act of June 5, 1920, 8 USC 137. The said warrant was served on petitioner on March 5, 1938, and pending further proceedings petitioner was released on his own

recognizance. A hearing on said warrant was originally set for April 25, 1938, but was postponed due to the holding of the U. S. Circuit Court in the case of *Kessler v. Strecker*, 95 F. (2d) 976.

Thereafter on January 24, 1939, Representative Thomas introduced a resolution (House Resolution 67, 76th Congress, 1st Session) for the Impeachment of Frances Perkins, Secretary of Labor, James L. Houghteling, Commissioner of the Immigration and Naturalization Service, and Gerard D. Reilly, Solicitor of the Department of Labor, for high crimes and misdemeanors in conspiring "from September 1, 1937 * * * to commit offenses against the United States, by failing [25] and neglecting to enforce the immigration laws of the United States * * * against Alfred Renton Bryant Bridges." Two months later, the House Judiciary Committee filed House Report No. 311, which took up "the salient facts of each allegation forming the bases of the resolution." The report concluded that "after a consideration of all the evidence in this case, the committee is unanimous in its opinion that sufficient facts have not been presented or adduced to warrant the interposition of the constitutional powers of impeachment by the House." (p. 40)

In April, 1939, the United States Supreme Court rendered its decision in the case of *Kessler v. Strecker*, 307 US 22. Shortly after said decision, the warrant of arrest against petitioner was amended. Originally said warrant charged petitioner with past membership in and affiliation with an organization proscribed by the said immigration

law. By virtue of said amendment, the said warrant charged petitioner with present as well as past membership in and affiliation with a proscribed organization. Hearings on said amended warrant before Trial Examiner James M. Landis, Dean of the Harvard Law School, opened on July 10, 1939 and continued through September 14, 1939. Under date of December 28, 1939, the said Trial Examiner transmitted his findings and conclusions, a copy of which was filed with the original petition for writ of habeas corpus herein, marked Exhibit "B", and by reference incorporated therein. Upon the basis of said findings and conclusions, Secretary of Labor Frances Perkins cancelled the warrant of arrest and dismissed the proceedings against petitioner under date of January 8, 1940.

Thereafter, on May 15, 1940, a special bill was introduced (HR 9766, 76th Congress, 3rd Session) directing the Attorney General "notwithstanding any other provision of law" forthwith to take into custody and deport petitioner, on the alleged ground that his "presence in this country the Congress deems hurtful." Said bill died in the Senate Committee on Immigration.

On June 28, 1940, the Alien Registration Act became law. [26] It included a provision adding past membership in and affiliation with proscribed organizations as grounds for deportation. Said provision was enacted to overrule the decision of the Supreme Court in the said Strecker case, and to accomplish the deportation of petitioner. Thereafter, the Federal Bureau of Investigation con-

ducted a nation-wide investigation against petitioner, over a period of three months, during which hundreds of persons were interviewed, resulting in the compilation of a 2500-page report which was submitted to the Attorney General. On February 12, 1941, the Attorney General ordered a warrant of arrest to be issued against petitioner, and petitioner was arrested under said warrant on February 14, 1941. Despite the fact that petitioner was released on his own recognizance in connection with the first said proceeding against him and appeared and attended whenever required therein; and despite the fact that the said Immigration and Naturalization Service usually has not required any bail, or, where bail has been required, the same has been set at \$500, petitioner was required by the Department of Justice to post bail in the sum of \$3000.

The hearing on said second warrant of arrest was set for March 31, 1941, and petitioner's applications and motions, supported by affidavits, for a reasonable postponement of said hearing were denied.

Even after the Presiding Inspector filed, on September 26, 1941, his proposed findings and conclusions recommending petitioner's deportation, another special bill, HR 1644, was introduced in Congress and came up without notice on the private bill calendar, on October 6, 1941, and was passed by the House by unanimous consent, with less than fifty members of the House present.

On January 3, 1942, the Board of Immigration Appeals unanimously decided the case favorably to

petitioner, ordered the cancellation of the warrant of arrest, and the dismissal of the proceedings against petitioner. Petitioner is informed and believes [27] and therefore alleges that since the creation of the Board of Immigration Appeals on or about September 3, 1940, in no instance has the Attorney General reversed a unanimous decision of said Board except in the case of petitioner.

For more than twenty years no deportation proceedings have been taken against any alien on the charge of membership in or affiliation with the International Workers of the World, for the reason that the said Immigration and Naturalization Service was convinced and had ruled that said organization was not proscribed by the deportation statutes. Ever since approximately January 3, 1934, no deportation proceedings have been taken against any alien on the charge of membership in or affiliation with the Marine Workers Industrial Union, an affiliate of an organization known as the Trade Union Unity League, for the reason that, on said date, the said Immigration and Naturalization Service held and ruled that membership in or affiliation with the Trade Union Unity League or any union affiliated therewith did not constitute grounds for deportation. Despite these facts, in said second proceeding petitioner was charged with past affiliation with said Marine Workers Industrial Union, and with past membership in said International Workers of the World, although said membership was limited to a few months in the year 1920 and was terminated by petitioner because

of his disagreement with the principles, program and activities of said organization; all of which was known by the said Immigration and Naturalization Service prior to the making of said charge against petitioner.

By virtue of the foregoing facts, petitioner has been singled out for, and has been subjected to, discriminatory and unequal treatment, and petitioner has been denied the equal protection of the laws, in violation of the 5th Amendment to the Constitution of the United States. [28]

XIII.

As alleged, on January 3, 1934, the said Department of Labor held and determined that membership in or affiliation with the Trade Union Unity League or any of its affiliated trade unions, including the Marine Workers' Industrial Union, was not grounds for deportation. Further, ever since said date, and until the time of the filing of the within petition, in no instance have any deportation proceedings been taken against any alien for membership in or affiliation with said Trade Union Unity League or any of its affiliated trade unions, including the Marine Workers' Industrial Union, except in the case of petitioner. Petitioner is informed and believes and therefore alleges that since January 3, 1934, the said Department of Labor and the said Department of Justice have known, and it is a fact that, there are, and throughout said period have been, in the United States several thousands of aliens who have been members of or affiliated

with said Trade Union Unity League, or one or more of its affiliated trade unions, including the said Marine Workers' Industrial Union, and, because of *an* pursuant to the said ruling and decision on January 3, 1934 as aforesaid, both the said Department of Labor and the said Department of Justice have knowingly and deliberately refused and failed to bring deportation proceedings against any such aliens. By virtue of the foregoing facts, petitioner has been denied the equal protection of the laws, in violation of the Fifth Amendment to the Constitution of the United States.

XIV.

The warrant of arrest in the said 1939 deportation proceedings against petitioner charged that petitioner "became and now is" a member of and affiliated with an organization proscribed by law, which organization was thereafter alleged by the Government to be the Communist Party. At the opening of the said hearing, the Government called petitioner to the witness stand and asked the following questions:

"By Mr. Shoemaker:

"Q. At this time I just wish to ask you but two questions. Are you an alien?

"A. I am.

"Q. Are you now a member of the Communist Party? "A. No.

"Q. Or have you at any other time in the past been a member of the Communist Party?

"A. No.

"Mr. Shoemaker: No further questions at this time. I will ask the witness to leave the stand."

(Transcript of 1939 proceedings, p. 11.)

Additional evidence that the said 1939 hearing involved not only present membership and affiliation, but also past membership and affiliation is contained in the Government's statement of its theory of the case. In its brief to Dean Landis, the Government said:

"It will be recalled that in the case of *Kessler vs. Strecker*, supra [59 S. Ct. 694], the respondent admitted that he joined the Communist Party in November, 1932, and asserted that his membership terminated prior to March 1, 1933, and had never been renewed. The opinion held, in effect, that the Act of 1918 as amended by the Act of 1920 did not provide for the deportation of an alien who had ceased to be a member of a subversive organization 'at the time of his arrest.' That opinion, it should be pointed out, and the fact should be emphasized, is not controlling in the instant case. In the *Strecker* case it was taken and accepted on the part of the Secretary of Labor, the trial court, the Appellate Court, and the Supreme Court, that the alien had once been a member of the Communist Party but was no longer a member thereof at the time of the arrest. That does not hold true in the instant case. It is the Government position that it has shown that prior to the arrest of Harry Bridges he was a member of the Communist

Party and has continued as such. It contends, and submits it has been proved, that, the alien having been shown to be a member of the Communist Party, the obligation rested upon him to show that he had ceased to be such member, and in the absence of such showing there is a legal presumption he remained a member, and therefore is subject to deportation under the Act of 1918 as amended.

“Membership and affiliation having been shown by the [30] government, it is a reasonable inference that if such membership and affiliation had ceased the alien would have asserted that as a defense. It is a well settled principle of law that where a fact is peculiarly within the knowledge of the person charged, the burden of proof of that particular fact rests upon such person.” (pp. 100-1)

In his Findings and Conclusions, Dean Landis expressly recognized that the questions of past as well as present membership and affiliation were issues in the case. This, he wrote, as follows:

“The alien's response to the charge against him was a complete and unequivocal denial. Not only did he deny that he was a member of the Communist Party but he also denied that he had ever been a member of that party.” (Landis, Findings and Conclusions, p. 7.)

By virtue of the foregoing, all of the issues involved in said second proceeding, except the question of membership in the Industrial Workers of

the World, had previously been decided and settled by the decision, on January 8, 1940, of the Secretary of Labor, adopting the said Findings and Conclusions of Dean Landis. A copy of said Findings and Conclusions was received in evidence in the said second proceedings as Alien's Exhibit "12". The said issues thus decided in and settled by said first proceeding became, were and are *res judicata*, and, except for the question of membership in the Industrial Workers of the World, became, were and are final and conclusive administrative determinations as to all the issues involved in the said second proceeding.

XV.

If the technical legal rules of *res judicata* are found inapplicable in this proceeding, there is nonetheless a denial of due process of law under the Fifth Amendment to the Constitution of the United States by reason of the facts alleged in Paragraph XIV, by a principle analagous to *res judicata*.

XVI.

The amended warrant on which the 1939 hearing against petitioner was held, charged: [31]

"(1) That, after he entered the United States, he became and now is a member of an organization that advises, advocates, and teaches the overthrow by force and violence of the Government of the United States;

(2) That, after he entered the United States he became and now is affiliated with such an organization;

(3) That, after he entered the United States he became and now is a member of an organization that causes to be written, circulated, distributed, printed, published, and displayed printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States;

(4) That, after he entered the United States he became and now is affiliated with such an organization."

The warrant on which the 1941 hearing was held, charged that after entering the United States, petitioner has been a member of or affiliated with an organization, association, society or group that believes in, advises, advocates or teaches the overthrow by force or violence of the Government of the United States; that writes, circulates, distributes, prints, publishes, or displays, or has in its possession for these purposes written or printed matter advising, advocating or teaching said doctrine.

By reason of the foregoing, and of the facts alleged in Paragraph XIV, petitioned has been subjected to double jeopardy in violation of the 5th Amendment of the Constitution of the United States.

XVII.

If the technical legal rules of double jeopardy are found inapplicable in this proceeding, there is nevertheless a denial of due process of law under the 5th Amendment to the Constitution of the United States by reason of the facts alleged in

Paragraphs XIV and XVI, by a principle analogous to double jeopardy.

XVIII.

Petitioner has been found deportable and has been ordered deported for past membership in and affiliation, antedating the passage of said statute, with organizations proscribed by law. The [32] said 1940 Amendment to the Deportation Law is, as written, and as construed and applied to petitioner, an *ex post facto* or retroactive law, in violation of the prohibition of Article 1, §9 of the Constitution of the United States.

XIX.

The detention, restraint and imprisonment of petitioner is illegal, unlawful and unreasonable for the reason that petitioner has been deprived of his right to freedom of speech, freedom of press, freedom of assembly, to petition the Government for a redress of grievances, and of liberty, of property, and of due process of law, in violation of the 1st and 5th Amendments to the Constitution of the United States, in that:

A. Said statute, 8 USC section 137, as written, is unconstitutional and deprives petitioner of the aforementioned rights and privileges.

B. Said statute, as written, and as construed and applied against petitioner, renders a person deportable for past membership without present membership in any organization proscribed by said statute. It thereby imposes an unreasonable lim-

itation upon the aforementioned rights and privileges.

C. Said statute, as construed and applied against petitioner, would result in deportation for membership in or affiliation with an organization whose existence, doctrines or activities have not been shown to, and do not, present a clear, serious or imminent danger of accomplishing any substantive evil which said statute is designed to prevent.

D. Said statute, as construed and applied to petitioner, would result in deportation for beliefs or activities which have not been shown to, and do not, present a clear, serious, or imminent danger of accomplishing any substantive evil which said statute is designed to prevent.

E. Petitioner has been ordered deported for membership [33] in or affiliation with organizations proscribed by said statute, although:

(1). There is no evidence or finding that petitioner had knowledge of the proscribed character of any of said organizations, or of the proscribed character of the activities, doctrines, or literature of any of said organizations.

(2) There is no evidence or finding that petitioner participated in the distribution of proscribed literature.

(3) There is no evidence or finding that petitioner had knowledge that the Marine Workers Industrial Union was a part of the Communist Party or dominated or controlled by it.

F. Petitioner has been ordered deported for affiliation with the Marine Workers Industrial Union. It has not been shown that the said organization engaged in any except legitimate trade union activities.

G. Said statute, as written, and as construed and applied to petitioner; contains no reasonably ascertainable standard as to what acts or conduct are proscribed by said statute.

H. By reason of all the facts set forth in this paragraph (Paragraph XIX), the said statute as written, and as construed and applied to petitioner, imposes conditions on his right to remain in the United States which are in violation of the 1st and 5th Amendments to the Constitution of the United States.

XX.

Petitioner was denied procedural due process of law in violation of the 5th Amendment to the Constitution of the United States in that:

A. He was denied adequate prior notice of the nature of the charges and was denied adequate opportunity to prepare his defense to said charges. The said warrant of arrest was served on petitioner on February 14, 1941. Said warrant charges [34] petitioner with violation of the said Act of October 16, 1918, as amended by the Acts of June 5, 1920 and June 28, 1940,

"In that after entering the United States he has been a member of or affiliated with an organization, association, society or group that believes in, advises, advocates or teaches the

overthrow by force or violence of the Government of the United States; that after entering the United States he has been a member of or affiliated with an organization, association, society, or group that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, written or printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States."

On or about March 18, 1941, a motion was made to Charles B. Sears, Presiding Inspector, in the office of the Department of Justice, Washington, D. C., for a postponement of the hearings, and a further motion for an order providing that counsel might examine the report of the Federal Bureau of Investigation or other evidence with reference to petitioner upon which the warrant of arrest issued, or if such permission was refused, that counsel for petitioner be furnished a list of the witnesses whose statements were taken by the Department of Justice and upon whose evidence or testimony the Government relied in issuing the warrant of arrest against petitioner. Said applications were denied by the Presiding Inspector, but in the absence of a stenographer no record of said denials has been preserved. The motions and supporting papers were introduced at the hearing and re-

ceived in evidence marked Alien's Exhibits 1, 2, 3 and 4, and are hereby made part of this petition.

Not until the first day of the hearing was petitioner informed, and then through the opening statement of Government counsel, that the organizations to which the charges contained in the warrant of arrest referred were the Communist Party, the Marine Workers Industrial Union, and the Industrial Workers of the World. Petitioner was given no notice of the times when or the places where the [35] Government claimed that petitioner was a member of or affiliated with any of such organizations.

The general and sweeping character of the charges in the warrant of arrest, together with the refusal to permit counsel to know upon what evidence said warrant of arrest issued, and the further refusal to grant counsel, in the light of the uncontradicted facts shown in Alien's Exhibits 1, 2, and 4, additional time in which to prepare for the hearing in the case at bar, each separately and all taken together, served to deny petitioner knowledge of the charges which he was required to meet, and time to prepare to meet such charges, and thereby served to deprive petitioner of due process of law in violation of the 5th Amendment to the Constitution of the United States.

B. Shortly after the commencement of the hearing, Government witness Chase admitted during cross-examination by petitioner's counsel, that he had, prior to appearing as a witness at said hearing, given statements to representatives of the Depart-

ment of Justice, which statements said Chase admitted were inconsistent with his testimony in chief on direct examination. Petitioner's counsel moved that said statements be produced and made available for examination and for possible impeachment purposes. Government counsel admitted that the prior statements of said witness were in their possession, but refused to produce said statements. The Presiding Inspector ruled that he would not require the production by the Government of the prior statements of any witnesses produced at the hearing by the Government, even though such statements were in the possession of Government counsel and were, in material respects, inconsistent with the testimony given by such witnesses. This ruling operated to deprive petitioner of the right of full cross examination of Government witnesses.

C. During the said hearing, petitioner applied to the Presiding Inspector for the issuance of subpoenas and subpoenas [36] duces tecum upon Frances Perkins as Secretary of Labor, Gerard B. Reilly as Solicitor of the Department of Labor, and Lemuel B. Schofield as Special Assistant to the Attorney General in charge of the Immigration and Naturalization Service, in order to establish through said witnesses and the documents called for by said subpoenas, the facts set out in Paragraph XIII. Said applications are in writing, and appear as Alien's Exhibits 28 and 29 for identification in the record of said hearing. Said applications are hereby referred to and by this reference incorporated herein. The said applications were denied by the

Presiding Inspector, and he refused to issue the subpoenas and subpoenas duces tecum called for therein.

During the said hearing petitioner offered in evidence a copy of the ruling of Daniel W. MacCormack as Commissioner of Immigration and Naturalization, and the opinion of Charles Wyzanski as Solicitor of the Labor Department, made under date of January 3, 1934, in which membership in the affiliation with the Trade Union Unity League or any of its affiliated unions, including the Marine Workers Industrial Union, was held not to constitute grounds for deportation. Said document, which appears as Alien's Exhibit 15 for identification in the record of the said hearing, is hereby referred to and by this reference incorporated herein. The Presiding Inspector refused to receive said exhibit in evidence.

During the said hearing, petitioner offered in evidence a copy of a letter dated November 18, 1934, written by Daniel W. MacCormack as Commissioner of Immigration and Naturalization, which letter refers to evidence in possession of the United States Department of Labor material and pertinent to the questions of affiliation and doctrines, ever since July 1, 1933, of the Marine Workers Industrial Union and the Trade Union Unity League. Said document appears as Alien's Exhibit 25 for identification, and is hereby referred to and by this reference incorporated herein. The Presiding Inspector refused to receive said exhibit in evidence. [37]

XXI.

The said detention, restraint and imprisonment of petitioner, and the Attorney General's Decision and Order, are illegal and void, and error of law was committed, for each of the following reasons:

A. As alleged in Paragraph V, petitioner moved for an order directing the examination of witnesses with respect to the illegal use of wire-tapping against petitioner in connection with the preparation or presentation of the said second hearing. Said motion was accompanied by supporting affidavits. In the Memorandum of Decision made by said Presiding Inspector, it is found as a fact that agents of the Federal Bureau of Investigation did violate Section 605 of the Federal Communications Act by committing illegal acts of wire-tapping against petitioner. Notwithstanding petitioner was denied a hearing, although requested by him, for the examination of witnesses with respect (1) the use of such wire-tapping in connection with the preparation or presentation of evidence in the 1941 hearing of this cause, and (2) the use made either directly or indirectly of intercepted telephone messages and facts ascertained as a result of such wire-tapping. By reason of the foregoing, petitioner was deprived of the opportunity to establish that evidence in the record of said cause, which was considered by the Attorney General, should have been stricken because it had been illegally obtained.

B. The action of the Attorney General in reversing the Findings of Fact, Conclusions of Law,

Decision and Order of the Board of Immigration Appeals is erroneous and void in that:

(1) The Attorney General did not find that said Findings, Conclusions, Decision and Order of said Board were unsupported by substantial evidence;

(2) It appears from the face of the Attorney General's Opinion and Decision that the said Findings, Conclusions, [38] Decision and Order of the Board were considered by the Attorney General to be supported by substantial evidence.

(3) The record contains substantial evidence to support the said Findings, Conclusions, Decision and Order of the said Board of Immigration Appeals.

C. The Attorney General relied on, gave consideration to, and partially based his decision upon the testimony of Government witnesses Diner, Honig, Laurence, Cannalonga, St. Clair, Wilmot, and Thompson, notwithstanding that the testimony of said witnesses was not accepted by either the Presiding Inspector or the Board of Immigration Appeals as establishing the facts to which they testified.

D. The Attorney General relied on, gave consideration to, and partially based his decision upon the testimony of the Government witnesses set forth in Paragraph C, solely and concededly on the basis of the volume of their testimony, despite the fact that the individual testimony of each of said wit-

nesses was not accepted by him as establishing the facts to which each such witness testified.

E. The aforementioned Lemuel B. Schofield was in charge of the preparation and presentation of said second hearing against petitioner, both as chief prosecutor in said 1941 proceeding and as Special Assistant to the Attorney General in charge of the Immigration and Naturalization Service. Throughout said hearing, said Schofield was biased and prejudiced against petitioner. Petitioner is informed and believes and therefore alleges that said Schofield sought to and did abuse the authority and special prestige of his office to, and he did, influence the judicial deliberations of the Attorney General in reaching the latter's decision, by informally urging the Attorney General to order the deportation of petitioner, and by expressing to the Attorney General opinions adverse to petitioner, which opinions were not based on the record [39] of said hearing. The Attorney General failed and neglected to provide petitioner with an opportunity to meet and overcome the contentions and urging of said Schofield.

F. Petitioner is informed and believes and therefore alleges that the Attorney General did not read the petitioner's briefs, motions, pleadings, or affidavits, or the transcript and exhibits in said second hearing.

G. The rules of the Immigration and Naturalization Service, which have the force and effect of law, throughout the times involved in this paragraph, provided as follows:

"Section 90.3 Board of Immigration Appeals; powers. (a) Subject to the provisions of section 90.12, the Board of Immigration Appeals in behalf of the Attorney General shall have authority:

(1) To issue orders of deportation after proceedings in accordance with law and regulations; to order the cancellation of warrants of arrest issued in such proceedings; and in connection therewith to exercise such of the discretion conferred upon the Attorney General by law as is appropriate to the disposition of such appeals;"

"Section 90.12 Board of Immigration Appeals; reference of cases to the Attorney General. In any case in which a dissent has been recorded; in any case in which the Board shall certify that a question of difficulty is involved; in any case in which the Board orders the suspension of deportation pursuant to the provisions of section 19(a) of the Immigration Act of 1917, as amended, or in any case in which the Attorney General so directs, the Board of Immigration Appeals shall refer the case to the Attorney General for review of the Board's decision. In any case in which the Attorney General shall reverse the decision of the Board, or in any case in which suspension or deportation is ordered pursuant to the provisions of section 19(c) of the Immigration Act of 1917, as amended, the Attorney General will state in

writing his conclusions and the reasons for his decision."

The decision in this cause of the said Board of Immigration Appeals was unanimous in favor of petitioner, and no member of said Board recorded a dissent. Said case is not one in which the [40] Board ordered suspension of deportation pursuant to Section 19(c) of the Immigration Act of 1917 as amended. Petitioner is informed and believes and therefore alleges that the said Board did not certify the case to the Attorney General, nor did the Attorney General direct the said Board to refer said case to him for review. Petitioner has never received notice of any such certification or direction, and the official record and file of the 1941 hearing does not contain any such certification or direction.

H. The Decision and Order of the Attorney General were made without according petitioner any opportunity for a hearing before the Attorney General, and without hearing any evidence or argument of petitioner's counsel, and without permitting the filing of briefs on petitioner's behalf, and without informing petitioner of the proposed action of the Attorney General prior to the issuance of said Decision and Order.

The Attorney General's decision relies upon the collective testimony of Government witnesses Diner, Honig, Laurence, Cannalonga, St. Clair, Wilmot and Thompson, who had not been relied upon by the Presiding Inspector or the Board of Immigra-

tion Appeals as establishing the truth of any facts to which they testified.

Immediately after the Attorney General's said Decision and Order, and prior to petitioner's surrender pursuant to the warrant of deportation, petitioner filed a petition and motion for a hearing or re-hearing before the Attorney General. A copy of said motion and petition is filed herewith, marked Exhibit "K", and by this reference incorporated herein. Said motion and petition was denied in a Memorandum Opinion, a copy of which is filed herewith, marked Exhibit "L", and by this reference incorporated herein, without any hearing or opportunity for hearing being afforded petitioner before the Attorney General.

I. The entire second proceeding against petitioner did [41] not constitute a bona fide investigation to ascertain the facts, but was a proceeding instituted and conducted for the purpose of establishing preconceived and biased views and conclusions against petitioner.

J. The said Decision and Order of the Attorney General was arbitrary, capricious, discriminatory, and unfair, and was made in wilful disregard of the evidence, and without evidence to support it, and in wilful disregard both of settled rules of evidence and of the rules of the Immigration and Naturalization Service, and without affording petitioner a proper or fair hearing or adequate opportunity for proper preparation for hearing.

K. Petitioner is informed and believes and therefore alleges that in reaching his decision, the

Attorney General relied on or had in mind confidential information not disclosed to petitioner, consisting in part of the aforementioned 2500-page F.B.I. report.

XXII.

The said detention, restraint and imprisonment of petitioner is unlawful, the Attorney General's Decision and Order are illegal and void, and error of law was committed for each of the following reasons.

A. The Attorney General's decision accepts as true certain extra-judicial statements found by him to have been made by Government witness James O'Neil. O'Neil testified at said hearing that he did not make such statements and that the facts contained in such attributed statements are not true. The said extra-judicial statements were unsworn and unsigned, not given in any hearing or judicial proceeding or any public proceeding, and were without any notice to petitioner or opportunity for cross-examination on behalf of petitioner. Neither before nor after the making of such statements was O'Neil asked by anyone to be sworn or to sign such statements.

Said statements were received in evidence by the Presiding In- [42] spector over objection of petitioner's counsel and are the basis in part for the said deportation order against petitioner.

By virtue of the following, settled rules of evidence in administrative proceedings have been violated, petitioner has been deprived of cross-examination of a witness giving material testimony, and

rules of the Immigration and Naturalization Service have been wilfully violated. Said rules are as follows:

Section 150.1 (c) [formerly 19.1(c)]

"Investigations; interrogation of aliens under investigation. All statements secured from the alien or any other person during the investigation, which are to be used as evidence, shall be taken down in writing; and the investigating officer shall ask the person interrogated to sign the statement. Whenever such a recorded statement is to be obtained from any person, the investigating officer shall identify himself to such person and the interrogation of that person shall be under oath of affirmation. Whenever a recorded statement is to be obtained from a person under investigation, he shall be warned that any statement made by him may be used as evidence in any subsequent proceeding."

Section 150.(d) [formerly 19.1(d)]

"Investigations; refusal to make recorded statement under oath or affirmation. Whenever, in the course of an investigation, admissions or statements are obtained from an alien or statements are made by any other person which indicate that the alien may be subject to arrest and deportation, but the alien or other person refuses to make a recorded statement under oath or affirmation or refuses or is unable to sign the recorded statement by name or by mark, the investigating officer shall make a

report in writing to the officer-in-charge, setting forth the facts admitted or stated as to the alien's status under the immigration laws. This report may be used in support of an application for a warrant of arrest, when the investigating officer certifies that no other evidence to establish the facts stated in the report can be readily obtained. Statements obtained in confidence may be included in such report, without disclosure of their source, only if the officer in charge certifies that in his belief such statements are trustworthy."

Section 150.6(i) [formerly 19.6(i)] [43]

"Hearing; use of statement or admissions made during investigation. A recorded statement made by the alien (other than a General Information Form) or by any other person during an investigation may be received in evidence only if the maker of such statement is unavailable or refuses to testify at the warrant hearing or gives testimony contradicting the statements made during the investigation. An affidavit of an inspector as to the statements made by the alien or any other person during an investigation may be received in evidence, otherwise than in support of the testimony of the inspector, only if the maker of such statement is unavailable or refuses to testify at the warrant hearing or gives testimony contradicting the statement and the inspector is unavailable to testify in person."

B. The Attorney General's decision relies upon certain testimony of Government witness Harry Lundeberg. Said testimony was full of substantial discrepancies and contradictions and the most material point of his testimony was admittedly inconsistent with statements made by him on at least three different occasions to Government officials. Lundeberg concededly borne extreme hostility toward petitioner, and his testimony was entirely uncorroborated.

C. The Attorney General's decision finds that petitioner was an editor of a memographed paper entitled the Waterfront Worker, which was, until some time in August, 1933, a publication of the Marine Workers Industrial Union, and that petitioner was such editor beginning December, 1932.

The Attorney General's decision also finds that the Waterfront Worker was dominated, after September 15, 1933, by the Marine Workers Industrial Union or the Communist Party. There is no evidence to support either finding.

D. The Attorney General's decision finds that petitioner was affiliated with the Marine Workers Industrial Union, and that said union was a part of the Communist Party, dominated and controlled by it. There is no evidence to support either of said findings.

E. The Attorney General's decision relies on Government [44] witnesses whose testimony contains discrepancies, contradictions and internal inconsistencies so substantial as to point clearly to the unreliability of such testimony

F. The Attorney General's decision rejects testimony of petitioner for minor discrepancies which are due to the natural limitations of human observation and recollection.

G. The Attorney General's decision fails, refuses and neglects to consider evidence produced by petitioner

H. The Attorney General's decision rejects the testimony of petitioner without according him the presumption of innocence to which his testimony is entitled

I. The Attorney General's decision fails to consider the presumption adverse to the Government created by the knowing and wilful use by Government representatives of false testimony against petitioner.

J. The aforementioned ruling of Daniel W. McCormack as Commissioner of Immigration and Naturalization, referred to in Paragraph XX(C), was a final ruling and decision and was binding on the Attorney General.

K. The evidence introduced against petitioner was insufficient to overcome the prima facie case in favor of petitioner established by Exhibit "H" and the order based thereon of Secretary of Labor Frances Perkins.

L. The Attorney General's Decision and Order is not supported by substantial evidence.

XXIII.

The Attorney General's Decision and Order is based upon an erroneous conception and definition of the term affiliation, not warranted either by the

statutory use of that term or by its judicial construction.

XXIV.

The Attorney General's Decision and Order is erroneous and [45] void insofar as it construes and applies 8 USC 137, as amended 1940, retroactively to acts occurring prior to the date of passage of the 1940 amendment to said statute.

XXV.

Each of the errors hereinabove set forth taken separately, and all of them taken together, constitute error of law, and rendered said second hearing unfair, and served to deprive petitioner of a fair hearing and of liberty, property, and the things that make life worth living, without due process of law, in violation of the 5th Amendment to the Constitution of the United States.

XXVI.

Jurisdiction is conferred on this court by 28 USC section 452, giving the judges of the District Courts power to grant habeas corpus for the purpose of an inquiry into the cause of restraint of liberty.

XXVII.

All of the exhibits filed with, and by reference incorporated in, the original petition for a writ of habeas corpus herein, are and each of them is hereby referred to and by this reference incorporated herein, with the same exhibit designations which they bear as exhibits to the said original petition.

Petitioner does not have extra copies of the ex-

hibits referred to herein, and for that reason is unable to serve such copies upon the said Attorney General or the said District Director of Immigration and Naturalization at San Francisco. Said exhibits are numerous and extremely lengthy, and it would therefore be burdensome and expensive for petitioner to prepare copies of said exhibits; and it would require many weeks before copies of all said exhibits could be prepared. Copies of each and all of the said exhibits are in the possession or under the immediate control of the said Attorney General and the said District Director. Petitioner therefore requests that this honorable court direct that service of copies of [46] the within petition may be made without service of copies of the exhibits.

Wherefore, petitioner prays for the issuance of an order, directed to the said Attorney General, to show cause why the writ of habeas corpus should not be granted petitioner; and that, upon the hearing and disposition of said order, this honorable court grant and issue to petitioner the writ of habeas corpus, and order the discharge from custody of petitioner, restoring petitioner to his liberty; and that this honorable court issue its order that, pending further order of the court, the custody of said Harry Bridges shall not be disturbed nor transferred, nor shall he be taken out of the jurisdiction of this court, except in accordance with the said order or the further order of this court; and that the court issue its order that, pending the further order of this court, the said Harry Bridges be

forthwith admitted to bail in a sum to be fixed by the court; and for such other and further relief as may be just and proper in the premises.

HARRY BRIDGES

LEE PRESSMAN

Congress of Industrial Or-
ganizations

Washington, D. C.

CAROL KING

100 Fifth Avenue, New York
City, N. Y.

GLADSTEIN, GROSSMAN,

MARGOLIS AND SAWYER

560 Mills Tower, San Fran-
cisco, California

By **RICHARD GLADSTEIN**

AUBREY GROSSMAN

Attorneys for Petitioner [47]

State of California

City and County of San Francisco—ss.

Richard Gladstein and Aubrey Grossman, being first duly sworn depose and say: that they are attorneys of record for the petitioner named in the foregoing petition; that the petitioner is absent from the jurisdiction where they have their office, and for that reason unable to verify said petition; that they have read the foregoing petition and know the contents thereof, and the facts therein stated are within their knowledge; that said petition is true of their own knowledge, except as to those matters

therein stated on information and belief, and as to such matters, they believe it to be true.

**RICHARD GLADSTEIN
AUBREY GROSSMAN**

Subscribed and sworn to before me this 6th day of July, 1942.

[Seal]  **DOROTHY McLENNAN**

Notary Public in and for the City and County of
San Francisco, State of California

Receipt of service.

[Endorsed]: Filed July 6, 1942. [48]

EXHIBIT "A"

United States of America
Department of Justice
Washington

WARRANT—DEPORTATION OF ALIEN

San Francisco file No. 12020/25037
No. 55973/217-A

To: District Director of Immigration and Naturalization, San Francisco, Calif.

Or to any Officer or Employee of the United States Immigration and Naturalization Service.

Whereas, after due hearing before an authorized immigrant inspector, and upon the basis thereof, an order has been duly made that the alien

Alfred Renton Bryant Bridges or Harry Bridges or Harry Renton Bridges, who entered the United

States at San Francisco, California on the 12th day of April, 1920, is subject to deportation under the following provisions of the laws of the United States to wit: The Act of October 16, 1918, as amended by the Acts of June 5, 1920, and June 28, 1940, in that:

(1) After entering the United States he has been a member of an organization, association, society, or group that believes in, advises, advocates, and teaches the overthrow by force and violence of the Government of the United States;

(2) After entering the United States he has been affiliated with an organization, association, society, or group that believes in, advises, advocates, and teaches the overthrow by force and violence of the Government of the United States;

(3) After entering the United States he has been a member of an organization, association, society, or group that writes, circulates, distributes, publishes, and displays printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States;

(4) After entering the United States he has been affiliated with an organization, association, society, or group that writes, circulates, distributes, publishes, and displays printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States;

(5) After entering the United States he has been a member of an organization, association, society, or group that caused to be written, circulated, distributed, published, printed, and displayed

printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his direction, do hereby command you to deport the said alien to Australia at the expenses of the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1942," including the expenses of an attendant, if necessary. Delivery of the alien and acceptance for deportation will serve to cancel the outstanding delivery bond.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 29th day of May, 1942.

(Sgd) W. W. BROWN,

W. W. Brown,

Chief, Warrant Branch.

[Endorsed]: Filed Jun. 4, 1943. Paul P. O'Brien, Clerk.

I. F. Wixon

65

EXHIBIT B

[Endorsed]: Filed June 2, 1942. Walter B. Maling, Clerk.

IN RE

HARRY BRIDGES

BEFORE THE

ATTORNEY GENERAL

IN

**DEPORTATION
PROCEEDINGS**

UNITED STATES DEPARTMENT OF JUSTICE

HARRY BRIDGES

BEFORE THE

ATTORNEY GENERAL

IN

DEPORTATION
PROCEEDINGS

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1942

CONTENTS

	Page
History of the Case.....	1
The Issues Involved.....	6
History of the Communist Party—Its Aims and Purposes.....	7
Penetrative Activities of the Communist Party.....	9
Front Organizations.....	11
The Background and History of Bridges.....	12
Bridges' Connection with the "Waterfront Worker".....	13
Testimony Bearing on Bridges' Membership in or Affiliation with the Communist Party.....	18
Harry Lundeborg.....	18
James D. O'Neil.....	20
Other Evidence of Bridges' Association with the Communist Party..	24
North American Aviation Strike.....	27
Conduct Establishing a Pattern of Affiliation.....	27
The I. W. W. Organization.....	28
Wiretapping.....	29
Double Jeopardy.....	29
Res. Judicata.....	30
Findings of Fact and Conclusions of Law.....	30
Order.....	33

IN RE HARRY BRIDGES

Case No. 55973/217

BEFORE THE ATTORNEY GENERAL IN DEPORTATION PROCEEDINGS

This case comes to me for decision from the Board of Immigration Appeals.

History of the Case.

On March 2, 1938, the Assistant to the Secretary of Labor issued a warrant for the arrest and deportation of Harry Renton Bridges¹ on the ground that he was subject to deportation pursuant to the provisions of Section 2 of the Act of October 16, 1918, as amended by the Act of June 5, 1920. Section 2 of that Act provides as follows:

* * * any alien who, at any time after entering the United States, is found to have been at the time of entry, or to have become thereafter, a member of any one of the classes of aliens enumerated in section one of this Act, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported * * *

Section 1 of the Act (as amended by the Act of June 5, 1920) insofar as relevant to this report, is as follows:

Aliens who * * * are members of or affiliated with any organization, association, society or group that believes in, advises, advocates, or teaches: (1) The overthrow by force or violence.

¹ The warrant was served on Bridges on March 5, 1938.

² 40 Stat. 1012.

of the Government of the United States * * *

(3) The unlawful damage, injury or destruction of property, or (4) Sabotage—

Aliens who are members of or affiliated with any organization, association, society, or group that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in paragraph (d).

The giving, loaning, or promising of money or anything of value to any organization, association, society, or group of the character above described shall constitute affiliation therewith; but nothing in this paragraph shall be taken as an exclusive definition of advising, advocacy, teaching, or affiliation.*

James M. Landis, Dean of the Harvard Law School, was appointed trial examiner for the purpose of the hearing which lasted from July 10 to September 14, 1939.

On April 17, 1939, the Supreme Court of the United States, in *Kessler v. Strecker*,⁴ construed the above-quoted Act so as to confine the Secretary of Labor to a determination of the relation of the alien to an organization, seeking and advocating the overthrow of the Government by force and violence, to the time at which the arrest of the alien took place. The trial examiner, on December 28, 1939, found⁵ that the evi-

* 41 Stat. 1008, 1009.

⁴ 307 U. S. 22 (1939).

⁵ Landis, J. M., In the Matter of Harry Bridges (1939), p. 134.

dence did not establish that Bridges was a member of nor affiliated with the Communist Party of the United States of America, the organization under scrutiny, at that time.* The Secretary of Labor sustained the finding, cancelled the warrant, and dismissed the proceedings on January 8, 1940.¹

On June 28, 1940, Congress amended the statute referred to so as to provide for deportation of an alien who was "at the time of entering the United States, or has been at any time thereafter" a member of any one of certain classes of aliens.* On June 14, 1940,² the

*The trial examiner pointed out that one type of evidence examined as to Bridges' membership or affiliation with the Communist Party was that which consisted of alleged conduct consistent only with such membership or affiliation (p. 9). In this connection, testimony and evidence were developed which showed Bridges' "well-defined opposition toward 'red baiting'; his acceptance of aid and assistance in his industrial struggles from the Communist Party—indeed, his solicitation of that aid; his expressed disinclination to disavow that help; his association with persons admittedly Communists, an association that derives primarily from his requests for and acceptance of such aid. There are, specifically, his support of the Western Worker during the 1934 maritime strike; his requests for aid in connection with such issues as the *King-Ramsey-Connor* and *Modesto* cases, and the United Labor Party ticket; his not infrequent conferences with the Communist officials on the Pacific coast in regard to these and other matters; his admiration of the sincerity of persons in the trade-union movement, some of whom were avowedly Communists, and his willingness to work with them in the realization of his trade-union ideas" [p. 133].

¹ Sears, Charles B., Memorandum of Decision in the Matter of Harry Renton Bridges, p. 2.

* 54 Stat. 673. (The classes of aliens are those enumerated in Section 1 of the Act of October 16, 1918, as amended June 5, 1920).

² 54 Stat. 230, 1238.

Immigration and Naturalization Service had been transferred from the Department of Labor to the Department of Justice, pursuant to the provisions of the Reorganization Act of 1939.¹⁰ The Attorney General, in view of the amendment referred to, directed the Federal Bureau of Investigation to make a further investigation to determine whether, under the law as changed, grounds existed for re-opening the deportation proceedings against Bridges. As the result of this further investigation a warrant was issued by the Attorney General and Bridges was arrested on February 14, 1941, and released under bond of \$3,000. The Hon. Charles B. Sears, a retired judge of the New York Court of appeals, was appointed an Inspector in the Immigration and Naturalization Service to preside over the hearings, take testimony, and make the appropriate recommendations, in accordance with the provisions of Sec. 150.6 of the Regulations of the Immigration and Naturalization Service.¹¹

The Presiding Inspector held hearings in San Francisco from March 31 to June 12, 1941.¹² Bridges was represented by Carol King, of New York, and Richard Gladstein and Aubrey Grossman of San Francisco. The public and the press were admitted to the hearings.¹³ The evidence covers 44 volumes of 7546 typewritten pages. In addition the Government introduced 297 exhibits, and the alien 62. On September 26, 1941, the Presiding Inspector transmitted to the

¹⁰ Approved April 3, 1939, 54 Stat. 563.

¹¹ Sears, p. 2-3.

¹² Sears, p. 5.

¹³ Sears, p. 6.

Attorney General his memorandum of decision, covering 187 printed pages. His Proposed Findings of Fact¹⁴ and Conclusions of Law,¹⁵ made in accordance with the regulations of the Service, held, in part, that the Communist Party of the U. S. A. was, "from the time of its inception in 1919 to the present time—an organization that believes in, advises, advocates, and teaches the overthrow by force and violence of the Government of the United States";¹⁶ that it was an organization that "writes, circulates, distributes, prints, publishes, and displays printed matter advising, advocating, or teaching" such overthrow;¹⁷ that "the Marine Workers' Industrial Union was a part of the Communist Party dominated and controlled by it"¹⁸ and advocated similar overthrow;¹⁹ and that after entering the United States the alien had been a member of the Communist Party^{19a} and had been affiliated with both the Communist Party²⁰ and the Marine Workers' Industrial Union.²¹ Judge Sears accordingly concluded that Bridges was subject to deportation under the statutes referred to; and submitted a proposed order for his deportation.²²

¹⁴ Sears, p. 178.

¹⁵ Sears, p. 179.

¹⁶ Proposed Finding of Fact No. 3.

¹⁷ Proposed Finding of Fact No. 4.

¹⁸ Proposed Finding of Fact No. 7.

¹⁹ Proposed Finding of Fact No. 8.

^{19a} Proposed Finding of Fact No. 9.

²⁰ Proposed Finding of Fact No. 10.

²¹ Proposed Finding of Fact No. 11.

²² Sears, p. 190.

The alien excepted to the proposed findings, and, in accordance with the usual practice, briefs were filed by both sides and oral argument was had before the Board of Immigration Appeals on November 24, 1941. On January 3, 1942, the Board handed down a long opinion (99 mimeographed pages) which contained Findings and Conclusions that the record did not establish that Bridges was at any time a member of or affiliated with any organization proscribed by the statute, and accordingly entered an order that the warrant of arrest and bond be cancelled, execution of the order to be stayed pending further order of the Attorney General.²³ The case is therefore now before me for decision.

The Issues Involved.

The statute under which this proceeding is brought is the Act of October 16, 1918,²⁴ as amended by the Acts of June 5, 1920²⁵ and June 28, 1940.²⁶

²³ Memorandum of Board of Immigration Appeals, In re: Harry Renton Bridges, p. 99.

²⁴ 40 Stat. 1012.

²⁵ 41 Stat. 1008. The relevant portions of that statute are as follows:

"Aliens who * * * are members of or affiliated with any organization, association, society, or group that believes in, advises, advocates, or teaches: (1) The overthrow by force or violence of the Government of the United States * * * (3) The unlawful damage, injury, or destruction of property, or (4) Sabotage—

"Aliens who are members of or affiliated with any organization, association, or group that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue,

The issues presented are chiefly issues of fact, and they are vigorously contested. The Government claims that Bridges after entering the United States was a member of and affiliated with the Communist Party of the U. S. A. and the Marine Workers' Industrial Union, and that both these organizations advocated and advocate the overthrow by force or violence of the Government of the United States. Judge Sears found in favor of the Government on both these issues.²⁷ The Board of Immigration Appeals determined that Bridges' membership in or affiliation with these organizations had not been established, and therefore deemed it unnecessary to decide whether the Communist Party or the Marine Workers' Industrial Union comes under the statute. The alien offered no evidence to controvert this.²⁸ There was ample evidence to sustain it, which I shall now discuss briefly as, although not admitted, it is not disputed.

History of the Communist Party—Its aims and purposes.

The Communist Party of the United States, a section of the so-called Third International, was founded in 1919;²⁹ and, after its name was changed several times,

or display, any written or printed matter of the character described in paragraph (d).

"The giving, loaning, or promising of money or anything of value to any organization, association, society, or group of the character above described shall constitute affiliation therewith; but nothing in this paragraph shall be taken as an exclusive definition of advising, advocacy, teaching, or affiliation."

²⁷ 54 Stat. 673.

²⁸ Sears, p. 179.

²⁹ Board Memorandum, p. 3.

³⁰ Transcript, p. 54.

finally became The Communist Party of the U. S. A. in 1929.³⁰ The Third International advocated the class struggle, which was described as entering the phase of civil war in America. Illegal methods were also advocated, where necessary, to carry on its work; systematic agitation in the army; the renouncing of patriotism; and the revolutionary overthrow of capitalism.³¹

The American "section" adopted a program declaring:

The Communist Party will systematically and persistently propagate the idea of the inevitability of and necessity for violent revolution and will prepare the workers for armed insurrection as the only means of overthrowing the capitalist state.³²

The Communist Party teaches the violent overthrow of existing governments, including the United States. This concept reaches back to the famous Manifesto of Marx and Engels of 1848,³³ which declares:

The Communists disdain to conceal their views and aims. They openly declare that their ends can be attained only by the forcible overthrow of all existing social conditions.³⁴

In The Thesis and Statutes of the Third International (1920) this doctrine is expanded. "The mass struggle means a whole system of developing demonstrations growing ever more acute in form, and logically

³⁰ Gov. Ex. 135, pp. 296, 299, 300; Gov. Ex. 129, pp. 2, 17; Gov. Ex. 130, pp. 18, 19.

³¹ Gov. Ex. 94, pp. 27-32.

³² Gov. Ex. 98, pp. 6-7.

³³ Gov. Ex. 91, p. 3.

³⁴ Gov. Ex. 91, p. 44.

leading to an uprising against the capitalistic order of Government.”³⁵ Lenin speaks of the necessity of violent revolution.³⁶

This and much other documentary evidence introduced by the Government, and the oral evidence of a number of witnesses to the same effect, who testified that the Communist Party of the United States had indoctrinated its members with these purposes,” establishes, as Judge Sears concludes, that it is an organization that advises, advocates, and teaches the overthrow by force and violence, of the Government of the United States.³⁷

The evidence also sustained the Government’s contention that the Party writes, circulates, distributes, prints, publishes, and displays printed matter advising such overthrow, so that the Party comes within the purview of the statute.³⁸ This also Judge Sears found.⁴⁰

Penetrative Activities of the Communist Party.

Penetration into trade unions was strongly emphasized in Communist literature, and conversion of their members by constant agitation and propaganda. Reforms in the labor movement should be accepted as

³⁵ Gov. Ex. 94, p. 47.

³⁶ Gov. Ex. 182, pp. 19-20.

³⁷ Tr. pp. 51-55, 76, 93, 115-117, 285, 303-364, 376-378, 381, 1393-1394, 1398, 1433-1434, 1863-1864.

³⁸ Sears, p. 178.

³⁹ Gov. Ex. 93, pp. 6, 12-13; Gov. Ex. 105, p. 16; Gov. Ex. 182, pp. 9-34; Gov. Ex. 184, pp. 14-18; Gov. Ex. 95, pp. 36-37; Gov. Ex. 98, p. 7; Gov. Ex. 102, p. 62; Gov. Ex. 237, p. 20; Gov. Ex. 120, pp. 32, 54, 59, 62; Gov. Ex. 225, p. 453; Gov. Ex. 230, p. 57; Gov. Ex. 138, pp. 127, 14.

⁴⁰ Sears, p. 178.

screens behind which revolutionary activities could be carried on. To carry out this program the Trade Union Educational League was formed about 1921, for the purpose of infiltration into the A. F. of L. unions, of "boring from within."⁴¹ "Fractions" were organized within particular unions to advance the aims of Communism behind the "front" of education.⁴² The union was the American affiliate of the Red International of Labor Unions, which was the Trade Union Bureau of the Comintern.⁴³ The League was to compel its Party members to join labor unions; the Party was to engage in strikes and wage movements, to war against class collaboration plans, and to organize the unorganized.⁴⁴

In 1929 the Trade Union Educational League became the Trade Union Unity League, which began a new program of organizing directly its revolutionary industrial unions controlled directly by the Communist Party.⁴⁵ Its official publication was "Labor Unity", of which the Government witness Nat Honig was for a time editor.⁴⁶ The T. U. U. L., as it was called, openly supported⁴⁷ and was dominated⁴⁸ by the Communist Party.

⁴¹ Tr. pp. 72-77; Gov. Ex. 135, pp. 164-165.

⁴² Tr. p. 444; Tr. pp. 72-77, 150, 161; Tr. pp. 368-372; Gov. Ex. 120; p. 6.

⁴³ Tr. p. 78; Tr. p. 137.

⁴⁴ Tr. pp. 208-213.

⁴⁵ Tr. pp. 234-236; Gov. Ex. 164, p. 809; Gov. Ex. 220, p. 26; Gov. Ex. 129, p. 32; Tr. pp. 486-487; See also Gov. Ex. 66.

⁴⁶ Gov. Ex. 135, p. 218.

⁴⁷ Gov. Ex. 135, p. 220; Gov. Ex. 221, p. 13.

⁴⁸ Tr. pp. 443-448; Gov. Ex. 220, p. 31; Gov. Ex. 164, pp. 799, 810.

The Trade Union Unity League chartered the Marine Workers' Industrial Union in 1930.⁴⁹ The Government contended that Bridges was a member of or affiliated with this Union during the years 1932, 1933, and 1934. This Union included both seamen and long-shoremen in its membership, contrary to the craft type of organization of the A. F. of L. It was liquidated in 1935.⁵⁰

Judge Sears found, and I concur in the finding, that affiliation with or membership in the Marine Workers' Industrial Union was grounds for deportation."

Front Organizations.

Testimony on "front organizations" showed that they were represented to the public for some legitimate reform objective, but actually used by the Communist Party to carry on its activities pending the time when the Communists believe they can seize power through revolution.⁵¹ The Party took control of the Workers' Alliance as a medium through which to organize the unemployed, "to develop widespread militant mass struggles," and "to build the revolution" through association in "a militant class-conscious unemployed organization."⁵²

Other Communist front organizations were the International Labor Defense, whose immediate purpose

⁴⁹ Gov. Ex. 221, p. 8; Tr. p. 1920.

⁵⁰ Gov. Ex. 164, p. 812; Tr. 1920, 5886.

⁵¹ Sears, p. 62. The alien himself evidently recognized the character of this organization since he testified in the 1939 hearing that he was aware that the goal stated by the M. W. I. U. was the establishment of a "Revolutionary Workers Government."

⁵² Tr. pp. 78-79.

⁵³ Tr. pp. 450-454.

was to defend Communists, but among whose members were many non-Communists unaware of its Communist control;⁵⁴ the All-American Anti-Imperialist League,⁵⁵ the American Negro Labor Congress,⁵⁶ and the American League against War and Fascism.⁵⁷

The Background and History of Bridges.

Bridges is a citizen of Australia.⁵⁸ He entered the United States in 1920, and has not returned to Australia. In 1933, having been a longshoreman, he became active in trade-union work on the San Francisco water front. It is apparent that he has done much to improve the conditions that existed among the longshoremen. He was successful in reorganizing and leading the International Longshoremen's Association, an A. F. of L. union. He led the 1934 maritime workers' strike on the Pacific Coast; was president of the local I. L. A. from 1934 to 1936, and Pacific Coast president in 1936. In 1937 his union was expelled from the A. F. of L., changed its name to International Longshoremen and Warehousemen's Union, and affiliated with the C. I. O., of which Bridges was promptly elected Pacific Coast District President. He holds several important offices in the C. I. O.⁵⁹

⁵⁴ Tr. pp. 179-180.

⁵⁵ Gov. Ex. 35; Tr. pp. 154-155; see also Gov. Ex. 18, pp. 1-2; Gov. Ex. 36, pp. 7, 12; Gov. Ex. 60.

⁵⁶ Gov. Ex. 36; Tr. pp. 160-163; see also Gov. Ex. 28, pp. 4-5.

⁵⁷ Tr. pp. 365-368; 454-459; 1262, 1264-1265.

⁵⁸ Tr. p. 10.

⁵⁹ This information is not disputed and it is more fully developed in Judge Sears' memorandum. See pp. 82-88.

Bridges' Connection with the Waterfront Worker.

There is sharp disagreement between the Presiding Inspector and the Board of Appeals as to whether or not Bridges' connection with the "Waterfront Worker" shows affiliation with an organization proscribed by the statute. Judge Sears holds that it does;⁶⁰ the Board, convinced that "the alien's testimony on the matter is consistent and truthful,"⁶¹ finds that at the time Bridges was connected with the paper it was not an organ of the Marine Workers' Industrial Union or of the Communist Party.⁶²

The "Worker" was a mimeographed sheet published in San Francisco from December 1932 until 1936. It was first issued by the Marine Workers' Industrial Union,⁶³ identified as an affiliate of the Communist Party. Bridges with a group of longshoremen was active in the publication of the paper.⁶⁴ At the 1939 hearing little was made of this fact, and no copies of the paper were introduced in evidence. At that hearing Bridges testified that he became connected with the paper in September or October, 1932, "maybe a month or two," after it had been running.⁶⁵ Thirteen copies of the paper were introduced at the second hearing, the first, dated February 1933, being numbered "Volume 1, No. 2." The same number refers to the "first issue," and to the "December issue." Judge

⁶⁰ Sears, p. 97.

⁶¹ Board memorandum, p. 43.

⁶² Board memorandum, p. 43.

⁶³ Tr. p. 2553.

⁶⁴ Tr. pp. 2551-2565.

⁶⁵ Tr. pp. 2562-2563.

Sears concludes that the first issue under Bridges' sponsorship was that for December 1932, giving reasons which seem to me persuasive.⁶⁶ He notes that of the issues of the paper in evidence, four of the five published prior to September 15, 1933, acknowledge the assistance of the M. W. I. U.; and that the alien, in the 1941 hearing, stated that his group had not taken it over till September 1933,⁶⁷ contradicting what he had previously said, apparently to disassociate himself from any connection with the M. W. I. U. Judge Sears concludes that there was no change in the sponsorship of the paper in September 1933, and that Bridges and his group were responsible for its publication from 1932 to 1936. Judge Sears finds during that time no substantial change in the paper's policy.⁶⁸

Bridges admitted that the address, 830 Market Street, was the first used by his group; yet it was used only before July 1933. Judge Sears further concludes that the paper during Bridges' sponsorship was under the control of M. W. I. U. and the Communist Party, because (1) of the acknowledged cooperation with M. W. I. U. at first, and later the favorable treatment of M. W. I. U. and T. U. U. L. and other Communist-sponsored organizations; (2) consistent attacks upon reactionary leaders of the A. F. of L.; (3) support of Communist candidates for political office; (4) advice to read Communist

⁶⁶ Sears, p. 91.

⁶⁷ Sears, p. 92.

⁶⁸ Sears, p. 92.

literature; and (5) the use of addresses of Communists or Communist organizations.⁶⁹

The Board treats Bridges' changed testimony at the two hearings as a normal inconsistency, the first testimony being merely a slip of the tongue as to the year;⁷⁰ and concludes that the hiatus in publication referred to by him at the first hearing had actually occurred in 1933, when in the August issue the paper was dated by the day of publication (Aug. 15, 1933) instead of by mere reference to the month, as previously.⁷¹ The paper had changed from a monthly to a semimonthly basis in July, yet a full month elapsed between August 15 and September 13.⁷² This and certain evidence of changed editorial policy in the paper pointed out by the Board is not highly persuasive. The main consideration is the alien's veracity. Judge Sears heard him testify at the second hearing, and was not impressed. The Board did not have that advantage, and merely passed on the written record. I accept Judge Sears' finding on this point.

The Board having found that Bridges did not become connected with the "Waterfront Worker" until after September 15, 1933, considers the nature of the paper only after that date. But having agreed with Judge Sears' finding that Bridges had been connected with the paper since December 1932, I concur also with his finding that the paper was Communist

⁶⁹ Sears, p. 94.

⁷⁰ Board memorandum, p. 18.

⁷¹ Board memorandum, pp. 18-20.

⁷² Board memorandum, see table p. 19.

dominated since that date. No single reason given by Judge Sears conclusively establishes this: that the paper attacked A. F. of L. leaders; that it supported Communists for political office (Bridges said he would not decline to support people with respect to matters on which he was in agreement with them solely because they were Communists); because it advised reading Communist literature (Bridges claimed such literature alone printed the truth on labor matters); finally, because of the use of Communist addresses by the paper, though to my mind this latter reason is the most convincing of all. The first address, 830 Market Street, San Francisco, Room 421, was the headquarters of the Needle Trade Workers Industrial Union, a T. U. U. L. affiliate. The second, 3470 Nineteenth Street, San Francisco, was a building occupied by Walter Lambert, an admitted Communist.⁷³ The third, P. O. Box 1158, San Francisco, was rented by Harry Glickshon, an admitted Communist, who had been responsible for the publication of the "Worker" under the M. W. I. U.⁷⁴ Standing alone no reason, except perhaps this last, is conclusive; but they are cumulative, and taken together, make out a strong case.

The Presiding Inspector accordingly concluded that Bridges' connection with the "Waterfront Worker" showed his affiliation with the Communist Party.⁷⁵

This link, Judge Sears held, was supported by further evidence. Bridges was chairman of the strike commit-

⁷³ Gov. Ex. 219.

⁷⁴ Gov. Ex. 211.

⁷⁵ Sears, pp. 97-98.

tee of the International Longshoremen's Association in the 1934 strike."⁷⁶ He worked with Harry Jackson, an admitted Communist, in getting the Marine Workers' Industrial Union (a Communist union) to join the strike, and induced seamen to join the latter union."

Bridges opposed the adoption of a resolution by the Central Labor Council and by his own union, repudiating Communist organizations;⁷⁸ and, before the resolution was adopted, notified Sam Darcy, District Organizer of the Communist Party, that the resolution was being contemplated.⁷⁹ He approved acceptance of the services of the Western Worker, the Communist Party newspaper, to help the strike by publishing a daily strike bulletin free of charge.⁸⁰ This co-operation was referred to by William Z. Foster in his book, *From Bryan to Stalin*. "Harry Bridges," Mr. Foster wrote, "was elected chairman of the I. L. A. strike committee, and the 'Western Worker', local Communist organ, was endorsed as the official strike journal."⁸¹ William F. Dunne in a pamphlet describing the strike said: "The leadership passed into the hands of a left-wing group, working in fraternal co-operation with the M. W. I. U., headed by Harry Bridges."⁸² Judge Sears concludes that these associations and transactions were further evidence of the

⁷⁶ Tr. pp. 5401, 5411, 5423, 5848.

⁷⁷ Tr. pp. 5755-5757, 5854-5855.

⁷⁸ Tr. p. 7388.

⁷⁹ Tr. p. 5956.

⁸⁰ Tr. p. 5789.

⁸¹ Foster, Wm. Z., *From Bryan to Stalin* (1937), p. 260.

⁸² Dunne, Wm. F., *The Great San Francisco General Strike* (1934), p. 47.

alien's affiliation with the Communist Party.⁸³ I think this conclusion is not unwarranted.

Testimony Bearing on Bridges' Membership in or Affiliation with the Communist Party.

Judge Sears examines in detail the evidence of fifteen witnesses as bearing on Bridges' membership in or affiliation with the Communist Party. Much of this evidence is rejected as being untrustworthy, contradictory, or unreliable. However, the evidence of two witnesses is accepted as showing that Bridges was a member of the party. If this evidence is believed—and Judge Sears believed it—the doubt is decided. The question is substantially one of credibility. The Review Board did not think the evidence credible. But it should be remembered that Judge Sears saw the witnesses on the stand, watched their demeanor and expression, and was in a far better position to judge their truthfulness than the Review Board, dealing with the cold print of the record.

The two most important witnesses as to membership are Harry Lundeberg and James D. O'Neil.

Harry Lundeberg.

Lundeberg, a prominent A. F. of L. West Coast labor leader, testified that in the summer of 1935, at a dinner in Bridges' home, a man, whom Bridges later told Lundeberg was Sam Darcy, a prominent Communist, asked Lundeberg to join the Communist Party, saying that Bridges was a member. Bridges said: "You don't have to be afraid because nobody has to know you are a member of the Communist

⁸³ Sears, p. 103.

Party"; and added: "You don't have to be afraid, because I am one, too."⁸⁴ Bridges denied the conversation;⁸⁵ denied that Darcy had ever been at his house;⁸⁶ but admitted that Lundeberg had dined with him in 1935.⁸⁷ The witness testified that Bridges' wife, his daughter, and his secretary were at the dinner.⁸⁸ Bridges thought that his wife and secretary had been there.⁸⁹ They were not called to testify; and the Presiding Inspector felt, rightly, I think, that their absence weakened Bridges' statement,⁹⁰ although the Board was of the opinion that no such inference could be drawn.⁹¹

Lundeberg was by his own admission a biased witness; but so for that matter was Bridges. Lundeberg had previously told Federal Agents that he had no information that Bridges was a Communist.⁹² But Judge Sears thought that this was a "natural reluctance * * * to testify"; and believed the evidence.⁹³

As I have said, it is solely a matter of credibility. Judge Sears was the "trial judge," and it seems to me not inappropriate to accept his reaction to the witness. The Review Board analyzes Lundeberg's testimony at great length and rejects it for several reasons. Lunde-

⁸⁴ Tr. pp. 7006-7010; 7087.

⁸⁵ Tr. pp. 7509-7510.

⁸⁶ Tr. p. 7361.

⁸⁷ Ibid.

⁸⁸ Tr. p. 7083.

⁸⁹ Tr. pp. 7362; 7503.

⁹⁰ Sears, p. 106.

⁹¹ Board memorandum, p. 83, footnote 105.

⁹² Tr. p. 7087.

⁹³ Sears, p. 106.

berg had on three previous occasions told Government Agents that he had no information that Bridges was a Communist. When subpoenaed in this case he told the story to counsel for the Immigration Service the night before he was called. But anyone who is familiar with witnesses, and their reluctance to testify, as referred to by Judge Sears, knows that such a contradiction frequently occurs. Judge Sears was impressed with the "natural, rugged, hard-bitten fashion" with which Lundeberg testified.⁹⁴ The Review Board thought that since Bridges' testimony on other matters showed no indication that self-interest operated he should be believed in this question.⁹⁵ But because a man tells the truth in one instance hardly indicates that he is not lying in another. And Judge Sears saw and heard Bridges, while the Review Board did not.

James D. O'Neil.

O'Neil, a Government witness, failed to appear, and had to be cited. As publicity director of the C. I. O. he shared offices with Bridges after 1936. The two men were intimate. In October 1941 he made a statement to two FBI agents, which was taken down by a stenographer who was present, that he joined the Communist Party in December 1936;⁹⁶ that he walked into Bridges' office one day in 1937 and saw Bridges pasting assessment stamps in a Communist Party book; and that Bridges reminded the witness that he had not been attending Party meetings.⁹⁷ O'Neil admitted making

⁹⁴ Ibid.

⁹⁵ Board memorandum, p. 93.

⁹⁶ Tr. p. 2403.

⁹⁷ Tr. p. 2408.

the statement, testified that what he had stated was the truth, but that it was garbled, and untrue in the particulars mentioned." The stenographer, however, verified the correctness of the statement;" and Major Schofield testified that later O'Neil had repeated the statement to him and to other witnesses. Judge Sears admitted the statement, saying:

Whatever may be the common-law rule in relation to the reception of such evidence as that of Mrs. Segerstrom and Major Schofield, in this hearing the parties are not confined to common-law proof. Hearsay is admissible but the character of such evidence is an element to be used in its evaluation. The principal reason for the exclusion of hearsay at common law is that the opportunity for cross-examination is absent. In the present case, the sanction of cross-examination was present. Although the statement given to Mrs. Segerstrom and the statement made in the presence of Major Schofield were not under oath, there is something equivalent, for O'Neil testified on the stand that he told the truth in his interview with the agents of the FBI and in the interview at which Major Schofield was present. There is, in my opinion, therefore, every reason why this testimony should be heard and considered as substantive proof.¹⁰⁰

Judge Sears was convinced of the truth of the statement. Certain inconsistencies between the statement, and what the witness said in his later conversation with Major Schofield, were emphasized by the Board. But

⁹⁹ Tr. pp. 2387-2388, 2282, 2288, 2293-2294.

⁹⁹ Tr. pp. 2401-2413.

¹⁰⁰ Sears, p. 114.

these go to details, and do not affect the substance of what he said. It is important to note that the Board found "that O'Neil did make to Segerstrom [the stenographer] and Major Schofield the statements attributed to him by these witnesses."¹⁰¹

The Board held that the statements were admissible for purposes of impeachment, but not as affirmative, probative evidence.¹⁰² The Board, admitting that the technical rules of evidence do not apply to administrative procedures, was of the opinion, nevertheless, that the fundamental requirement of a fair hearing required that the statements be excluded.¹⁰³ With this I cannot agree. They were not submitted in the absence of the witness but only after he had taken the stand, admitted that he had made them, said he had spoken the truth when he made them, and denied merely that he had been correctly reported.

The Board cited Regulations (Section 150.1 (c) (d)) of the Service providing that statements of persons during an investigation must be taken down in writing, the signature requested, and the interrogation made under oath.¹⁰⁴ The Board concluded that this was not done and that the statements were therefore inadmissible. But as the Board says, the regulations were not called to the attention of the Presiding Inspector,¹⁰⁵ and no objection was made to the admission of the statements on the ground that they had not been taken in conformity

¹⁰¹ Board memorandum, pp. 61-62.

¹⁰² Board memorandum, pp. 64, 66.

¹⁰³ Board memorandum, p. 71.

¹⁰⁴ Board memorandum, p. 65.

¹⁰⁵ Board memorandum, pp. 66-67.

with the Regulations. The Regulations provide (d) that where the alien refuses to make a recorded statement under oath or to sign, the investigating officer shall make a report in writing which "may be used in support of an application for a warrant of arrest, when the investigating officer certifies that no other evidence to establish the facts stated in the report can be readily obtained. * * *"¹⁰⁶ It does not appear whether O'Neil was asked to sign the statement and swear to it. On the whole question I am of the opinion that Judge Sears' decision to admit the statements was appropriate and legally sound. The courts have constantly emphasized the fact that the technical legal rules of evidence do not apply to administrative proceedings such as deportation hearings. Hearsay evidence is properly admitted in such proceedings.¹⁰⁷

The Board stressed the impropriety of Judge Sears' admission of the O'Neil statement in violation of the "published Departmental Regulations."¹⁰⁸ Had the alien raised the question at the time of the hearing, compliance with the Departmental Regulations would have been obligatory and a deliberate rejection of a request to exclude the testimony would have rendered appropriate the objections now raised by the Board.¹⁰⁹ No objection having been raised by the alien through-

¹⁰⁶ Fed. Reg. Jan. 4, 1941, p. 68 ff.; Fed. Reg. Jan. 11, 1941, p. 1 ff.

¹⁰⁷ *Nicoli v. Briggs*, 83 F. (2d) 375 (1936); *Kjar v. Doak*, 61 F. (2d) 566 (1932); *Healy v. Backus*, 221 F. 358 (1915); *U. S. ex rel Bilokumsky v. Tod*, 263 U. S. 149 (1923).

¹⁰⁸ Board memorandum, p. 64.

¹⁰⁹ *Ex parte Radivoeff*, 278 F. 227 (1922).

out the hearing, however, he waived the right to object on the technical ground that the statement was not taken in accordance with the rules.¹¹⁰

The Board found that O'Neil's statements are not credible.¹¹¹ Judge Sears found the opposite.¹¹² Not having heard him testify it is difficult for me, acting necessarily in a reviewing capacity, to judge. Again I believe that more weight should be given Sears' findings, on matters involving credibility, than the Board's.

Other Evidence of Bridges' Association with the Communist Party.

There was other evidence tending to associate Bridges with the Communist Party. Lee F. Barlow testified that in 1935 Bridges, in answer to a question, said that the only way that a young fellow could get ahead in the labor movement was to join the Party.¹¹³ Though denied by Bridges,¹¹⁴ the Presiding Inspector reached the conclusion that the conversation took place.¹¹⁵ This has some significance in the general picture. There was testimony that on August 16, 1935, Bridges discussed with several active members of the Communist Party, at least two of whom

¹¹⁰ *U. S. ex rel. Vajtauer v. Commissioner*, 273 U. S. 103 (1927); *U. S. ex rel. Coria v. Commissioner*, 25 F. Supp. 569, 570 (1938); *Nicoli v. Briggs*, 83 F. (2d) 375, 378 (1936); *Kjar v. Doak*, 61 F. (2d) 566, 567 (1932); *Evanoff v. Bonham*, 50 F. (2d) 756, 758 (1931).

¹¹¹ Board memorandum, p. 74.

¹¹² Sears, p. 115.

¹¹³ Tr. p. 7130.

¹¹⁴ Tr. p. 7361.

¹¹⁵ Sears, p. 118.

were not members of a trade union, the contents of a telegram which he proposed to send to an officer of his local union.¹¹⁶ Judge Sears believed the evidence, and thought it showed a close association with Communists in line with other evidence of affiliation.¹¹⁷

Howard Rushmore's testimony was to the effect that Bridges had praised the Youth Congress, and mentioned cooperation which he had received from the National Students League—both identified as front organizations of the Communist Party.¹¹⁸ Judge Sears did not consider that this testimony established Bridges' membership in or affiliation with the Communist Party, but did show Bridges' attitude towards the Party and its program.¹¹⁹ Bridges' "sympathetic attitude towards Communists" was shown, said Judge Sears, by the testimony of Ezra F. Chase and John S. Horn, which, however, fell short of establishing membership.¹²⁰ Bridges' attack on so-called red-baiting tended to sustain this attitude.

Judge Sears excluded other evidence that Bridges had attended Communist meetings on the ground that it was inconclusive, unreliable, or contradictory—the evidence of Diner, that Bridges had attended a convention of the Communist Party on September 23, 1934;¹²¹ of Honig, who claimed to have seen Bridges

¹¹⁶ Tr. pp. 1240-1241, 1245-1246, 1249, 1276, 1282, 1285, 1290-1292.

¹¹⁷ Sears, p. 123.

¹¹⁸ Tr. p. 728 ff.

¹¹⁹ Sears, p. 133.

¹²⁰ Sears, p. 137.

¹²¹ Sears, p. 141.

at a number of "top fraction" meetings a short time before the 1936-1937 strike;¹²² of Thomas Lawrence, who claimed to have seen Bridges at a Communist meeting at some time between May 9 and July 31, 1934;¹²³ of Maurice J. Cannalonga, who testified that Bridges had participated in Communist "fraction" meetings;¹²⁴ of Richard A. St. Clair, who gave testimony that he had seen Bridges three times at Communist headquarters;¹²⁵ of Robert P. Wilmot, that he had seen Bridges at a Communist "fraction" meeting and had heard him confess to being a Communist;¹²⁶ and of John Oliver Thompson, who testified that Bridges had gone with two Communists to the Party's headquarters in New York.¹²⁷ All of these witnesses were, at one time or another, members of the Communist Party. Although Judge Sears concluded that their evidence, for one reason or another, did not establish membership in or affiliation with the Communist Party, taken as a whole it cannot, because of its volume, be completely disregarded.

Judge Sears found that the alien was not opposed to the publication in a trade-union newspaper of Communist releases provided that they were favorable to the policies being pursued by trade-unionists themselves. This finding is largely based on Bridges' own testimony that: "I believed that if the Communist Party happened to send in a statement saying they

¹²² Sears, p. 144.

¹²³ Sears, p. 147.

¹²⁴ Sears, p. 152.

¹²⁵ Sears, p. 155.

¹²⁶ Sears, pp. 158-159; Tr. pp. 1659-1662.

¹²⁷ Sears, p. 160.

would do everything they could to support the particular dispute at that time in behalf of the Union position, my position would be that I wouldn't have any great objection to seeing that carried in the union paper."¹²⁸

The North American Aviation Strike.

On June 5, 1941, the workers at the North American aviation plant in Los Angeles, engaged in production essential to the national defense, went on strike in violation of an agreement not to strike pending mediation before the National Mediation Board.¹²⁹ Richard L. Frankenstein, National Director of Aviation of the C. I. O., gave his opinion that the strike, though the demands were justified, was Communist maneuvered and unwarranted,¹³⁰ Bridges, who kept in close touch with the situation, regarded the strike as justified; and, though C. I. O. director of the State of California, did nothing to avert it or call it off—a view apparently in conflict with other C. I. O. high officials,¹³¹ Judge Sears held, justifiably I think, that though this did not, as the Government contended, show membership or affiliation, it did show Bridges' sympathetic attitude toward a strike denounced as a Communist maneuver.¹³²

Conduct Establishing a Pattern of Affiliation.

Judge Sears summarizes Bridges' attitude towards the Communist Party and its policies by saying that the "isolated instances," while not evidence to estab-

¹²⁸ Sears, pp. 157-158.

¹²⁹ Gov. Ex. 294.

¹³⁰ Tr. p. 7452.

¹³¹ Tr. p. 7476 ff.

¹³² Sears, p. 163.

lish membership in or affiliation with the Communist Party, nevertheless show a sympathetic or cooperative attitude on his part to the Party, and form "a pattern which is more consistent with the conclusion that the alien followed this course of conduct as an affiliate of the Communist Party, rather than as a matter of chance coincidence."¹³³ This conclusion, said Judge Sears, was strengthened by his consistently favoring nondiscrimination against union men because of Communist membership; and by his excoriating "red baiters," as he called those who took an opposite view, which "amounted to cooperation with the Communist Party in carrying out its program of penetration and boring from within."¹³⁴

The I. W. W. Organization.

I need not discuss the evidence of Bridges' membership in the Industrial Workers of the World as a ground for deportation, since Judge Sears was unable to conclude that "the I. W. W. during the period of Bridges' membership advocated or circulated documents advocating the illegal destruction or injury of property."¹³⁵ A contrary conclusion would not seem to be warranted.

Bridges as a "Good" Labor Leader.

Judge Sears permitted Bridges to show that he was a "good" labor leader.¹³⁶ Undoubtedly he helped to establish better working conditions as a result of the 1934 strike, and particularly to secure for maritime

¹³³ Sears, p. 169.

¹³⁴ Sears, pp. 169-170.

¹³⁵ Sears, p. 175.

¹³⁶ Sears, pp. 166-168.

workers higher wages. Judge Sears held that the evidence, however, was without probative value. Because Bridges was a "good" labor leader, and thought that a Communist could be a good labor man, hardly shows that Bridges was not a Communist. The argument is a non-sequitur.

Wiretapping.

Judge Sears' ruling on the alien's motion in relation to alleged wiretapping seems to me to present nothing of which the alien can complain. The alien made no showing whatever that wiretapping was used to obtain any of the evidence introduced against him at the hearing. The hearing was concluded on June 12, 1941. The alien now alleges that his wires were tapped from August 5 to August 22, 1941. Even assuming this allegation to be true, it certainly constitutes no ground for vitiating the hearing. Nothing in the decisions of the Supreme Court in *Nardone v. United States*,¹²⁷ or *Goldstein v. United States*¹²⁸ indicates that wiretapping employed after the completion of court or administrative proceedings, and never made the foundation of evidence introduced in such proceedings, is to be regarded as in any manner relevant.

Double Jeopardy.

The alien claims that the 1939 hearing established that he was neither a member of nor affiliated with the Communist Party of the United States of America, and that hence he was put in double jeopardy by

¹²⁷ 308 U. S. 338 (1939).

¹²⁸ 62 Sup. Ct. 1000; see also *Goldman v. United States*, 62 Sup. Ct. 993.

the proceedings before Judge Sears. This contention must be rejected. As Judge Sears says: "No jeopardy at all is involved for that word has application only to prosecutions of a criminal nature."¹³⁹ A deportation hearing is not a criminal prosecution—a fact which the courts have pointed out in numerous well-considered cases. *Mahler v. Eby*, 264 U. S. 32 (1924); *Bugajewitz v. Adams*, 228 U. S. 585 (1913); *Zakonaite v. Wolf*, 226 U. S. 272 (1912). Reference may also be made to *Helvering v. Mitchell*, 303 U. S. 391 (1938) in which Mr. Justice Brandeis expressly states that "in the civil enforcement of a remedial sanction there can be no double jeopardy."¹⁴⁰

Res Judicata.

The doctrine of *res judicata* likewise has no application to this proceeding. Deportation is not a punishment, nor are deportation proceedings similar to criminal prosecutions. Decisions in such proceedings are decisions of the executive department, rather than of the judicial. Executive decisions, as Mr. Justice Holmes pointed out in *Pearson v. Williams*,¹⁴¹ a leading immigration case, "cannot constitute *res judicata* in a technical sense."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Accordingly, I accept and affirm Findings of Fact (1) to (3), inclusive, and (8) to (10), inclusive, of the

¹³⁹ Sears, p. 16.

¹⁴⁰ P. 404.

¹⁴¹ *Pearson v. Williams*, 202 U. S. 281 (1906); See also *Wilbur v. United States*, 281 U. S. 206, 217 (1929); *United States ex rel. Tremaine v. Commissioner of Immigration*, 209 Fed. 137 (1913); *White v. Chan Wy Sheung*, 270 Fed. 764 (1921).

Board of Immigration Appeals; I reverse the Board's Findings (4) to (7), inclusive; I reverse the Board's Conclusions of Law; and I make the following Findings of Fact and Conclusions of Law, proposed by Judge Sears, to wit:

Findings of Fact

1. That HARRY RENTON BRIDGES is an alien, to wit, a native and citizen of Australia;
2. That said alien entered the United States at the port of San Francisco, California, April 12, 1920, as a member of the crew of the barkentine *Ysabel*;
3. That the Communist Party of the U. S. A., from the time of its inception in 1919 to the present time, is an organization that believes in, advises, advocates, and teaches the overthrow by force and violence of the Government of the United States;
4. That the Communist Party of the U. S. A., from the time of its inception to the present time, is an organization that writes, circulates, distributes, prints, publishes, and displays printed matter advising, advocating, or teaching the overthrow by force and violence of the Government of the United States;
5. That the Communist Party of the U. S. A., from the time of its inception to the present time, is an organization that causes to be written, circulated, distributed, printed, published, and displayed printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States;
6. That the Communist Party of the U. S. A., from the time of its inception to the present time, is an or-

ganization that has in its possession for the purpose of circulation, distribution, publication, issue, and display, printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States;

7. That the Marine Workers' Industrial Union was a part of the Communist Party, dominated and controlled by it;

8. That the Marine Workers' Industrial Union was an organization that believed in, advised, advocated, and taught the overthrow by force and violence of the Government of the United States;

9. That after entering the United States the alien has been a member of the Communist Party;

10. That after entering the United States the alien has been affiliated with the Communist Party;

11. That after entering the United States the alien has been affiliated with the Marine Workers' Industrial Union.

Conclusions of Law

That under the Act of October 16, 1918, as amended by the Acts of June 5, 1920, and June 28, 1940, the alien HARRY RENTON BRIDGES, is subject to deportation in that:

1. After entering the United States he has been a member of an organization, association, society, or group that believes in, advises, advocates, and teaches the overthrow by force and violence of the Government of the United States;

2. That after entering the United States the alien has been affiliated with an organization, association, society,

or group that believes in, advises, advocates, and teaches the overthrow by force and violence of the Government of the United States;

3. That after entering the United States the alien has been a member of an organization, association, society, or group that writes, circulates, distributes, publishes, and displays printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States;

4. That after entering the United States the alien has been affiliated with an organization, association, society, or group that writes, circulates, distributes, publishes, and displays printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States;

5. That after entering the United States the alien has been a member of an organization, association, society, or group that caused to be written, circulated, distributed, published, printed, and displayed, printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States.

/s/ FRANCIS BIDDLE,
Attorney General.

MAY 28, 1942.

ORDER

I therefore order that the alien, HARRY RENTON BRIDGES, be deported to Australia at the expense of the Government on the charges that:

1. After entering the United States he has been a member of an organization, association, society, or

group that believes in, advises, advocates, and teaches the overthrow by force and violence of the Government of the United States;

2. After entering the United States he has been affiliated with an organization, association, society, or group that believes in, advises, advocates, and teaches the overthrow by force and violence of the Government of the United States;

3. After entering the United States he has been a member of an organization, association, society, or group that writes, circulates, distributes, publishes, and displays printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States;

4. After entering the United States he has been affiliated with an organization, association, society, or group that writes, circulates, distributes, publishes, and displays printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States;

5. After entering the United States he has been a member of an organization, association, society, or group that caused to be written, circulated, distributed, published, printed, and displayed printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States.

/s/ FRANCIS BIDDLE,
Attorney General.

MAY 28, 1942.

EXHIBIT "D"

Immigration and Naturalization Service United

States Department of Justice

Case No. 55973/217

In the Matter of

HARRY R. BRIDGES

Deportation Hearing

Sirs:

Please Take Notice upon the annexed affidavit of Harry R. Bridges, verified the 29th day of August, 1941, the annexed affidavit of Leon Goodelman, verified the 28th day of August, 1941, and the annexed affidavits of Lawrence Kammet, Virginia Gardner, and Carol King, each verified and 2nd day of September, 1941, the undersigned will move at a time and place to be fixed by the Presiding Inspector in the above-entitled matter after such notice as he shall direct, for an order of the Presiding Inspector directing a hearing for the examination of witnesses with respect to/(a) the use of wiretapping in connection with the preparation or presentation of evidence in connection with the 1941 hearings against Harry R. Bridges, and/or (b) the use made either directly or indirectly of intercepted telephone messages and facts ascertained as a result of such wiretapping, and further directing that any evidence secured from any intercepted telephone message or messages or based either directly or indirectly upon such intercepted telephone message or messages be stricken from the transcript of

Exhibit "D"—(Continued)

the hearings in the above-entitled proceedings, and for such other and further relief as shall be proper.

Dated, New York, September 2, 1941.

Yours, etc.,

CAROL KING,

Attorney for Harry R. Bridges. Office & P. O. Address, 100 Fifth Avenue, Borough of Manhattan, City of New York.

GLADSTEIN, GROSSMAN,
MARGOLIS and SAWYER,
Of Counsel.

To:

HONORABLE CHARLES B. SEARS,

Presiding Inspector.

LEMUEL B. SCHOFIELD,

Special Assistant to Attorney General in Charge of Immigration and Naturalization Service, Department of Justice, Washington, D. C.

State of New York,
City of New York,
County of New York—ss.

Harry Bridges, being duly sworn, deposes and says:

I am the President of the International Longshoremen's and Warehousemen's Union, C.I.O., with a membership of some 30,000. My office address is at

Exhibit "D"—(Continued)

593 Market Street; Room 317, San Francisco, California.

On or about the 12th day of February, 1941, a warrant for my arrest was issued by the Immigration and Naturalization Service, Department of Justice, and thereafter from the 31st day of March for a period of approximately eleven weeks hearings in connection with these warrant proceedings were conducted in San Francisco, and the matter is now pending decision.

During the months of July and August, 1941, I have been intermittently at the Hotel Edison, located at 228 West 47th Street, Borough of Manhattan, City, County and State of New York.

Shortly after I began to reside at the Hotel Edison I became suspicious that my actions were being watched and my conversations listened in on. This suspicion became a certainty on or about the 5th day of August, 1941. On that day, in the lobby of the Hotel Edison, I saw a person I recognized as an agent whom I had previously seen on the West Coast. Thereafter I went back to my room, Room 1027, and looked under the door between Room 1027 and the adjoining room, Room 1025, and saw equipment in Room 1025 which I recognized as wiretapping equipment.

Beginning on or about the 21st day of July I had been located at the Hotel Edison in Room 827. On or about July 31st when I returned to the hotel I was assigned to Room 1027. I left the hotel on August 1st, and when I came back on August 4th I

Exhibit "D"—(Continued)

asked for a single room, not a room with double beds, and a room higher up. My suspicions were aroused by the fact that I was again assigned to Room 1027 which I stated I did not want.

Shortly after I saw this equipment on the floor, which consisted of earphones, wires, and a portable recording machine, I 'phoned a number of trade unionists with whom I transacted business explaining to them that my wires were being tapped and that confidential information should not be conveyed to me over the telephone.

On or about August 7th or 8th I secured a pair of field glasses and later a pair of binoculars. I thereupon went to the roof of the Hotel Piccadilly, located at 227 West 45th Street, Borough of Manhattan, City, County and State of New York, and from there was able to look into Room 1025 of the Hotel Edison. The curtains of Room 1025 were open as were also the windows, and the wiretapping equipment was lying partly on the bed and partly on the floor.

On the following day I rented Room 1231 at the Hotel Piccadilly, and with my binoculars I saw three or four persons in Room 1025 of the Hotel Edison. I gave up this Room 1231 in the Piccadilly on or about August 15th.

On or about August 18 Lawrence Kammet rented Room 929 at the Hotel Piccadilly for the use of the newspaper PM. Thereafter Leon Goodelman, a reporter for that newspaper, and Eugene Badger, a camera man for the same paper, were in the room a

Exhibit "D"—(Continued)

large part of the time. Both from Room 1231 and Room 929 of the Hotel Piccadilly, I and my friends observed the occupants of Room 1025 of the Hotel Edison. We saw them using earphones and otherwise engaged in what appeared to be listening in on conversations and 'phone calls of Room 1027 at the Hotel Edison. So that I could observe this at times friends of mine went to Room 1027 at the Hotel Edison, and at other times so that the observers in the Piccadilly could witness it, I went to my room at the Hotel Edison, Room 1027.

On Tuesday morning, August 19, I realized that Room 1025 at the Hotel Edison was not occupied for the first time as far as I knew since I had occupied Room 1027. I turned on the radio, put through a call on the telephone, and then unscrewed the cover of the telephone box and opened it. At this time Lawrence Kammet was in my room. When the telephone box was opened he and I observed a black microphone attached to the other wires in the telephone box. I thereupon screwed back the cover of the telephone box.

On Thursday, August 21, in the evening of that day, Leon Goodelman, Eugene Badger, Lawrence Kammet, and I were in Room 1027 at the Hotel Edison. I called the manager, Hugh J. Conners, again unscrewed the telephone box, and showed him the mechanism. Eugene Badger took pictures of the box with the cover open. I told Mr. Conners that my wire was being tapped by the occu-

Exhibit "D"—(Continued)

pants of the next room, Room 1025, and I wanted to know what the hotel proposed to do about it. Mr. Connors disclaimed any knowledge or responsibility for what was going on and stated that he could not disturb the occupants of the next room. He called the house detective, Fred Collier, and I asked Mr. Collier whether he had been in the adjoining room. He denied having been in there although I had seen him leave that room. The occasion on which I had seen him leave that room was when he came into my room when my telephone had gone dead, and he stopped to tell me that it was off the hook, when in fact this was not the case until Collier himself shoved the telephone so that it was partly off the hook.

On Thursday evening after I had opened the telephone box in Room 1027 I heard the telephone bells in Room 1025 tinkle, and likewise heard a sound as though wires were being clipped and suitcases being hastily shut. At this time my telephone rang and the operator asked me if I was calling downstairs, which was quite impossible otherwise the operator downstairs could not have gotten me. I stated to the operator that apparently the next room had gotten their wires crossed, and called upon Connors and Collier to witness this episode. I asked Connors to call the occupants of the next room, Room 1025 from my room, Room 1927, but he refused to do so but agreed to call them from downstairs. Meanwhile the camera man, Badger, sat down in the hallway just outside my room and said

Exhibit "D"—(Continued)

in a loud voice that he would stay there for thirty days if necessary, but that he would take a picture of the occupants of Room 1025.

Thereafter an employee of the telephone company, who identified himself as J. Seuss, came to Room 1027 and I showed him the microphone and asked him what it was. He would go no further than to say that it was not standard telephone equipment but refused to give it a name. After a time he did say, "Your guess is as good as mine."

At my request Oliver M. Salisbury, vice-president of the American Communications Association, who was a licensed electrician, came with a friend of his who was identified as employed for fifteen years by the Radio Corporation of America as a radio technician. Both Mr. Salisbury and his friend identified the mechanism in my telephone box as a radio induction microphone which was not standard equipment in a telephone box. They stated that it was capable of picking up the conversation in the room and over the telephone.

At about 2:30 A.M. on Friday morning, August 22, the occupant of Room 1025 opened his door and ran out. The camera man, Badger, took a flash-light picture of his back as he fled down the hall.

At about 3 A.M. on August 22 one of the owners of the hotel, Nathan Kramer, came to my room and I asked him to open Room 1025. He refused to do this but agreed to go into the room himself if all of the persons in Room 1027 would go back into that room and close the door. Thereafter Mr. Kramer

Exhibit "D"—(Continued)

came back into Room 1027 and stated that Room 1025 was unoccupied.

At about 4 A.M. on Friday morning three plainclothes men, one of them Lieutenant Jacobs of the New York Police force, came to my room and stated they came upon the request of the hotel management. After I told them that the F. B. I. had been tapping my wires they said they would rather not have anything to do with the matter. They did ask the manager to let them go into Room 1025, but when he refused to do so they left at about 6 A.M.

At about 3 P.M. on Saturday, August 23, Mr. Shepherd, the assistant manager, finally let me and Lawrence Kammet look into Room 1025. We found a clamp attached to the radiator and connected to it was a length of rubber insulated wire containing two strands which had apparently been clipped. We also found three pieces of black wiring tape about an inch or an inch and a half in length. In the dresser drawer there were two pieces of carbon paper, and by holding this up to the light we discovered that each piece carried the same words, and that the words at the end of the sheet were

"Evelle J. Younger
Special Agent".

I asked Mr. Shepherd to put this material in the hotel safe, and he placed all of it in a large envelope which he sealed.

On information and belief, that the tapping of

Exhibit "D"—(Continued)

my telephone wire from at least on or about the 5th day of August, 1941, to and including the 22nd day of August, 1941, was instigated and carried out by the Federal Bureau of Investigation. On information and belief, that a substantial portion of the evidence introduced at the deportation hearing against me was obtained, directly or indirectly, thru the tapping of telephone wires of myself and other witnesses at the said hearing. The sources of my information and the grounds of my belief are the fact that the Federal Bureau of Investigation has been tapping my wires subsequent to the said hearing, and that there was even more reason to tap telephone wires of myself and other witnesses prior to and during the said hearing.

I discovered the said tapping of my telephone wires as a result of the fact that I was suspicious that my wires would be tapped because public authorities had listened in on my conversations in the past as, for instance, during the 1937 Convention of the Maritime Federation at Portland, Oregon, when Doyle and Brown of the Portland Police Department concealed a dictaphone in my room which I discovered. (Cf. Findings and Conclusions of the Trial Examiner, p. 57.)

On Saturday, August 23, I moved from the Hotel Edison and moved to Room 929 at the Hotel Piccadilly, in which I am now residing.

On Monday, August 25, I was informed by Mr. Goodelman and Mr. Kammet that the package containing the articles discovered in Room 1025 had

Harry Bridges vs.

Exhibit "D"—(Continued)

been given to the former occupants by the Hotel Edison. I thereupon looked in the telephone book for the name Evelle J. Younger and found that he was listed as residing at 307 East 44th Street, Borough of Manhattan, New York City, with the telephone number of Murray Hill 6-7490.

HARRY R. BRIDGES.

Sworn to before me this 29th day of August, 1941.

[Seal]

SALLY N. FUCHS,

Notary Public, New York
County.

State of New York,
City of New York,
County of New York—ss.

Leon Goodelman, being duly sworn, deposes and says:

I reside at 41 Horatio Street, Borough of Manhattan, City, County and State of New York.

I am a reporter for the newspaper PM.

Attached hereto and made a part hereof are articles written by me which appeared in the said newspaper on the 25th, 26th and 28th days of Au-

Exhibit "D"—(Continued)

gust, 1941. I can say that the facts stated in the said articles are true of my own knowledge.

LEON GOODELMAN.

Sworn to before me this 28th day of August, 1941.

[Seal]

SALLY N. FUCHS,

Notary Public, New York
County.

New York

New York

PM, MONDAY, AUGUST 25, 1941

PM, TUESDAY, AUGUST 26, 1941

Labor

Labor

PM, MONDAY, AUGUST 25, 1941

THURSDAY, AUGUST 28, 1941

State of New York,
City of New York,
County of New York—ss.

Lawrence Kammett, being duly sworn, deposes and says:

I reside at 500 St. Johns Place, in the Borough of Brooklyn, County of Kings, City and State of New York.

I am a publicity writer on the staff of the Greater New York Industrial Council, C. I. O.

On Wednesday, August 13th, I was in Room 1231 at the Hotel Piccadilly with Virginia Gardner and Harry Bridges for several hours, from about 7:30 or 8 P.M. to about 9:30 or 10 P. M. I was stationed at the window sitting on the floor with field glasses.

Exhibit "D"—(Continued)

The lights in the room were out and the shade was partially drawn but was raised enough so that I could look out and see a man sitting at a typewriter in Room 1025 at the Hotel Edison. He was apparently just sitting and not typing.

After a while Harry Bridges and I went to Room 1027 at the Hotel Edison. We had a conversation in that room and then I went back to Room 1231 at the Hotel Piccadilly. Through my field glasses I could see Harry Bridges telephoning in Room 1027 of the Edison and the regular lights were out in Room 1025. However there seemed to be a light on the floor. I saw a man get up with earphones on his ears and a wire coming down from each earphone to a single cable under the man's chin. He stood up for a few minutes, then knelt down and went out of sight. He appeared to be a tall and large man.

On Monday, August 18, I rented a room on the south side of the Hotel Piccadilly, Room 929. I was in the room from about 7 P. M. until midnight. I observed Harry Bridges come into his room, Room 1027 at the Hotel Edison. Prior to that the next room in the Edison, Room 1025, was dark. When Bridges entered Room 1027 the light in the adjoining room, Room 1025, went on and the shade was pulled down. The room remained in that condition for about an hour until Harry Bridges left room 1027, at which time the shade in Room 1025 was raised and the light in that room went out. On this occasion there were with me in my room, Room

Exhibit "D"—(Continued)

929 at the Hotel Piccadilly, Leon Goodelman, a reporter for the newspaper PM, and Eugene Badger, a camera man for the same paper. On Tuesday morning a Big Bertha Camera was delivered to Room 929 at the Hotel Piccadilly for the said Badger. On several occasions on Tuesday, August 19, Wednesday, August 20, and on Thursday, August 21, I saw two different individuals, one apparently light-haired, and one apparently dark-haired, in Room 1025 at the Hotel Edison. On one occasion, I do not quite remember on which one of these days, I saw as I recall it, the light-haired man pasting together scraps of paper with a yellow tube of glue.

On Tuesday morning, August 19, I went into Room 1027 which was then occupied by Harry Bridges. On that occasion Bridges began to hunt around his room. He unscrewed the cover of the telephone box and opened the box. When the box was open both Bridges and I plainly saw a black microphone attached to the other wires in the telephone box with shiny, new, chromium or steel wires. After seeing this Bridges screwed back the cover of the telephone box.

On Thursday, August 21, at or about 5 P. M. the said Goodelman, said Badger, Bridges and myself were in Room 1027 at the Hotel Edison. Bridges called the manager, Hugh J. Connors, and showed him the microphone. Bridges said his wire was being tapped by occupants of the next room and he wanted to know what the hotel was going to do

Exhibit "D"—(Continued)

about it. Mr. Conners said it was all new to him, and he disclaimed knowledge or responsibility. He said he could not disturb the occupants of the next room. Conners called the house detective, Fred Collier, and Bridges asked Collier whether he had ever been in the adjoining room. The house detective disclaimed having been in the next room although he had been seen to leave that room to tell Bridges that his telephone was off the hook when in fact this was not the case. While the individuals aforesaid were in Room 1027 I heard the telephone bells tinkle in Room 1025, and heard a noise which sounded like wires being clipped and suitcases being shut. There was a general commotion in Room 1025. Bridges' telephone rang. Bridges said, apparently in answer to a question, that the persons in the next room had apparently gotten their wires crossed, and called upon Conners and Collier to witness this episode. Conners agreed to call the occupants of the next room from downstairs. Meanwhile Badger sat down on a chair in the hallway with his camera focused on the doorway of Room 1025 and said in a loud voice that he would keep vigil for thirty days if necessary, but that he would take a picture of the occupants of that room.

A telephone man who identified himself as J. Seuss came to Room 1027 and stated that the microphone was not standard equipment, that he did not care to name it, and added, "Your guess is as good as mine", or words to that effect.

Exhibit "D"—(Continued)

Thereafter one, Oliver M. Salisbury, vice-president of the American Communications Association, a licensed electrician, arrived with a friend identified as employed for fifteen years by the Radio Corporation of America as a radio technician. Both agreed that the mechanism which was not standard equipment in the telephone box was a radio induction microphone capable of picking up the conversation in the room and over the telephone.

After these persons had been in Room 1027 I went back to Room 929 at the Hotel Piccadilly and lay on the bed there with my field glasses trained on Room 1025 of the Hotel Edison. The shades were down, the lights were out, and the room was in darkness, as it was by then 9 P. M. At or about 2:30 A. M. I heard a commotion from Room 1027 which sounded as if there were about six people in the room, and I saw a flash on that side of the Hotel Edison. Thereafter I went back to Room 1027 at the Hotel Edison.

At or about 3 A. M. Nathan Kramer, the manager of the Hotel Edison, was asked by Bridges to open Room 1025, but refused to do so. He was willing, however, to go in that room himself if the persons in Room 1027 would close the door. We did so and Mr. Kramer thereafter came back and reported that Room 1025 was unoccupied. He stated nothing about any luggage in the room.

At about 4 A. M. of that morning, Friday, August 22, three plainclothes men, one of them Lieutenant Jacobs of the New York Police, came to Room

Exhibit "D"—(Continued)

1027. After Bridges said that the F. B. I. had been tapping his wire the plainclothes men said that they would rather not be in the middle. They were not sure about the law and they would rather check on it. However they did ask the manager to let them in on a friendly basis which the management refused to do. The detectives left at about 6 A. M.

At about 3 P. M. on Saturday, August 23, the assistant manager, Mr. Shepherd, let Bridges and myself look in Room 1025. One bed was not made up and the shades were drawn. One window on the court side was open. It was about three feet from the window of an adjoining room. We found a clamp commonly used in grounding listening devices attached to the radiator, and affixed to it was a twelve foot length of rubber insulated wire containing two strands of wire which had been clipped. We also found three pieces of black wiring tape about one and a half inches in length. In the dresser drawer there was some carbon paper. I held up a sheet and at the bottom saw the words

"Evelle J. Younger
Special Agent".

There was also a tube of LePages glue. Mr. Shepherd took all of these articles and placed them in a large envelope sealed. He stated that they were the property of the occupants of Room 1025.

A short time after Bridges and myself had investigated Room 1025 at the Hotel Edison a repre-

Exhibit "D"—(Continued)

representative of the New Young Telephone Company came to Room 1027 of the Hotel Edison at Bridges' request, and was asked by Bridges to remove the microphone from the telephone in that room. In order to do so he had to go into Room 1025, and Bridges and I accompanied him into that room in the presence of the assistant manager, Mr. Shepherd. The representative of the telephone company thereupon opened the terminal box of the telephone in Room 1025 and found that the wires from the microphone which were in the telephone box in Room 1027 were attached to the wires in the box in Room 1025. He thereupon unfastened the wires. I was asked to go into Room 1027 and remove the microphone from the telephone box in that room, and I did so, at the same time pulling out the wires which were connected to the telephone box in Room 1025.

On Monday, August 25, Goodelman and I went to the Hotel Edison. We were informed by Mr. Conners that the package containing the articles discovered in Room 1025 had been picked up by the occupants of the room at about 12 o'clock of that day. He refused to disclose the claimants and said he had no comment to make.

Thereafter on that day we went to 307 East 44th Street, New York City, and asked for Evelle J. Younger, that being his address as it appears in the New York telephone book. The house man stated that Younger had checked out an hour before. We went to the desk clerk and found that

Exhibit "D"—(Continued)

a forwarding address had been left, Evelle J. Younger, Federal Bureau of Investigation, Seattle, Washington.

LAWRENCE KAMMET

Sworn to before me this 2nd day of September, 1941

[Seal]

SALLY N. FUCHS

Notary Public, New York
County

State of New York.

City of New York

County of New York—ss.

Virginia Gardner, being duly sworn, deposes and says:

I am the secretary of the Citizens Committee for Harry Bridges with offices at 1265 Broadway, Borough of Manhattan, City, County and State of New York, Room No. 619.

On or about Wednesday, the 13th day of August, 1941, I went into a room at the Hotel Piccadilly, located at 227 West 45th Street, Borough of Manhattan, City, County and State of New York. I went to this room at or about 6 P. M. with Harry Bridges and Lawrence Kammet. I stationed myself at a window. I looked through a pair of binoculars at Room 1025 of the Hotel Edison, located at 228 West 47th Street, Borough of Manhattan, City, County and State of New York. Through the curtains of that room I could see a man sitting at a typewriter.

Exhibit "D"—(Continued)

After he had been with me for some time in the room at the Hotel Piccadilly, Lawrence Kammet left, taking Mr. Bridges' key to his Edison room, No. 1027. When Kammet entered that room, the man at the typewriter in Room 1025 dived to the floor, but soon returned to his position at the typewriter. In about fifteen minutes, Kammet returned to the room where Mr. Bridges and I were watching through glasses. Mr. Bridges then left and went over to the Edison, and shortly thereafter we saw him come to the window of No. 1027.

Kammet and I waited for about half an hour in the room at Hotel Piccadilly. Meanwhile, three friends joined Mr. Bridges, whom we observed. There was a red glow from the floor in Room 1025 at the Hotel Edison. At the close of about half an hour Kammet left the Hotel Piccadilly and went to Room 1027 at the Hotel Edison. At this time I knelt on the floor holding the binoculars for about thirty minutes. During this time I saw the man in Room 1025 getting up in a crouching position. He rose a little further, perhaps in a kneeling position. The short window curtains were slightly apart at the windows in his room, and I got a profile view of the man and could see an attachment across his head and earphones at his ears. I saw a profile view of his face. He had a ruddy complexion and dark hair which, I believe, was parted in the middle. He had a rather broad face. He was wearing a white shirt. The light went out in Bridges' room, Room 1027, and the

Exhibit "D"—(Continued)

man in the next room went down to the floor. At that point my telephone rang, and shortly thereafter the telephone in Room 1025 likewise rang. The man in that room stood up. He was very tall and I could see him speaking at the telephone. At this time he wore no earphones. After he had answered the telephone he dropped down to the floor again where he remained until I left the room at the Hotel Piccadilly.

VIRGINIA GARDNER

Sworn to before me this 2nd day of September, 1941

[Seal]

SALLY N. FUCHS

Notary Public, New York
County

State of New York

City of New York

County of New York—ss.

Carol King, being duly sworn, deposes and says:

I am one of the attorneys for Harry R. Bridges in connection with the deportation proceedings now pending against him.

Upon the basis of the facts set forth in the annexed affidavits of Harry Bridges, verified the 29th day of August, 1941, of Leon Goodelman, verified the 28th day of August, 1941, and of Lawrence Kammet and Virginia Gardner, both verified the 27th day of August, 1941, it seems plain that Bridges' telephone in Room 1027 of the Hotel Edison, 228 West 47th Street, Borough

Exhibit "D"—(Continued)

of Manhattan, City, County and State of New York, was tapped by agents of the Federal Bureau of Investigation from at least on or about August 5, 1941, until August 22, 1941.

The warrant of arrest against Bridges issued on or about February 12, 1941. He was put under arrest and released on bail February 14, 1941. The application by counsel for additional time to prepare for the hearing was opposed by Lemuel B. Schofield, Special Assistant to Attorney General in Charge of Immigration and Naturalization Service; and the hearing commenced on March 31, 1941.

Before and during the hearing, counsel did not have facts at their disposal to establish that wire-tapping was unlawfully employed, either directly or indirectly, by the Federal Bureau of Investigation or the Immigration and Naturalization Service in the securing of evidence which was presented at the said hearing.

In *Nardone v. U. S.*, 302 U. S. 379, the United States Supreme Court had reversed convictions for frauds on revenue because "a vital part of the prosecution's proof" consisted of telephone messages intercepted in violation of 47 U. S. § 605.

Section 605 of the Federal Communications Act, United States Code, Title 47, in part provides:

"* * * no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents,

Exhibit "D"—(Continued)

substance, purport, effect, or meaning of such intercepted communication to any person."

When the Nardone case came before the United States Supreme Court a second time, the judgment was again reversed. *Nardone v. U. S.*, 668. At that time, Mr. Justice Frankfurter recognized that the only question open to the United States Supreme Court was "whether the [trial] judge improperly refused to allow the accused to examine the prosecution as to the uses to which it had put the information' which *Nardone v. U. S.*, supra, found to have vitiated the original conviction." Mr. Justice Frankfurter said:

"A sensible way of dealing with such a situation—fair to the intendment of §605, but fair also to the purposes of the criminal law—ought to be within the reach of experienced trial judges. The burden is, of course, on the accused in the first instance to prove to the trial court's satisfaction that wire-tapping was unlawfully employed. Once that is established—as was plainly done here—the trial judge must give opportunity, however closely confined, to the accused to prove that a substantial portion of the case against him was a fruit of the poisonous tree."

United States v Weiss, 34 F. Supp. 99, likewise arose after the reversal by the Supreme Court of a conviction based upon evidence secured by wiretapping (*Weiss v. United States*, 308 U. S. 321).

Exhibit "D"—(Continued)

The government stipulated among other things that:

"Whereas the defendants in the above named case intend to apply to this Court for an order:

* * * * *

"B. Directing the United States to submit to an examination with respect to the uses made by it of such intercepted messages and facts ascertained by it as a result of such use:"

The Court granted subdivision B as set forth above.

In the case at bar, contrary to the situation presented in the second Nardone and second Weiss case, the wire-tapping was discovered only after the hearing had been conducted. But that does not change the applicable principle. In view of the fact that any adjournment of the hearing was opposed by Major Schofield who was actively engaged in preparing the Government's case, and he refused to furnish defense counsel with prior statements of government witnesses, opportunity to discover wire-tapping before or during the hearing was seriously circumscribed. If the F. B. I. was tapping Bridges' wires after the hearing, it is a fair inference that they had tapped not only his wires but those of other witnesses when the case was being prepared for hearing. This cannot be definitely ascertained without an examination of the appropriate government officials. To paraphrase the words of Mr. Justice Frankfurter in the second Nardone case: having proved, as is plainly done by the annexed affidavits, that wire-tapping was unlawfully employed, the Presiding Inspector must

Exhibit "D"—(Continued)

give opportunity to Bridges "to prove that a substantial portion of the case against him was a fruit of the poisonous tree."

CAROL KING

Sworn to before me this 2nd day of September,
1941

[Seal]

SALLY N. FUCHS

Notary Public, New York
County

[Endorsed]: Filed June 4, 1943. Paul P.
O'Brien, Clerk.

EXHIBIT "E"

IMMIGRATION AND NATURALIZATION
SERVICE, DEPARTMENT OF JUSTICE

File No. 55973/217

In the Matter of Harry Renton Bridges

MEMORANDUM OF DECISION

Charles B. Sears,
Presiding Inspector.

LETTER OF TRANSMITTAL

To the Honorable the Attorney General:

I submit herewith my memorandum in the matter of the deportation of Harry R. Bridges. With it I am transmitting the record, with exhibits. Included in the memorandum is a summary of the evidence, my findings and a proposed order.

Exhibit "E"—(Continued.)

A word or two of explanation seems necessary. The record is not in the form prescribed by the rules of the Department (Sec. 150.6 (b) of the Regulations of the Department of Justice, Immigration & Naturalization Service, effective Jan. 20, 1941). It includes, in addition to objections of counsel and the rulings on them, arguments of counsel and colloquies between counsel and the Presiding Inspector in respect thereto. These are included under a stipulation made by counsel and appearing at page 7545 of the record. In view of the voluminous character of the report of the hearing and the form taken by objections and arguments in discussion, it was thought best by counsel for the Government and for the alien and by myself, to submit as the record the entire reporter's transcript of what took place on the hearing, without revision of any kind.

In the summary of the evidence, I have included some analysis as well as some statements of the grounds upon which the evaluation of the testimony is founded. This has been done so as to make clear the bases for the findings on individual matters which are interspersed in the summary itself. A bare summary of the evidence without these interspersed analyses and comments would, I have thought, be less easily understandable.

The Government first offered a vast amount of evidence relating to the character, aims, and acts of the Communist Party of the United States and of certain other organizations subsidiary to it, or

Exhibit "E"—(Continued.)

allied with it. Documents formed a large part of this evidence. This I have treated in the first section of the memorandum following some general introductory matter.

In the second section of the memorandum the subject is the alien's relations to these organizations. As far as possible, I have broken this part of the case up into episodes, for easier understanding, and in general have treated the credibility of witnesses in connection with the testimony given by the witnesses as to the episodes themselves. The name of the principal witness as a heading in a number of instances identifies the episode.

In the third section of the memorandum I have treated matters relating to the Industrial Workers of the World, an organization in which the alien was concededly a member in the year 1921.

In an appendix, I have inserted my memorandum on the motion argued September 19, 1941, in relation to an examination as to wiretapping.

Respectfully submitted,

CHARLES B. SEARS,

Presiding Inspector.

Buffalo, N. Y., September 26, 1941.

Exhibit "E"—(Continued.)

CONTENTS.

	Page
Introductory	1
History	1
The Applicable Statute	3
The Present Proceedings and the Charges Contained in the Warrant of Arrest	4
The Procedure	6
Representation of Parties	6
The Subject and Scope of this Proceeding	7
Subpoenas	9
Production of Documents	10
Rules of Evidence	11
Affiliation	12
Contentions of the Alien of a Constitutional and a Legal Nature	14
A. Constitutional:	
1. Due process of law	14.
Insufficient time to prepare case	14
Denial of equal protection of the law	14
General unfairness of the proceeding	15
2. Double jeopardy	16
3. Ex post Facto Law	16
B. Res Judicata	17
Section I. The History, Nature, Objects, and Methods of the Communist Party of the United States	18
A. Origin	18
B. Witnesses and Documents	23
Benjamin Gitlow	23
Ezra F. Chase	25
Farrell Schnering	25
Howard Rushmore	27
Nathaniel Honig	29
John Oliver Thompson	29
William C. McQuiston	30
C. Evidence Relating to Advocacy of Force and Violence to Overthrow the Government of the United States	30
D. Evidence Relating to the Distribution of Literature	37
E. Strategy and Tactics Employed by the Communist Party To Accomplish Its Objectives	40
F. The Program of the Communist Party With Regard to the Labor Movement	46
The Trade Union Educational League	52
The Trade Union Unity League	58
The Marine Workers Industrial Union	59
Fractions	63
Front Organizations	66
The International Labor Defense	71
Other Front Organizations	72
Communist Party Schools	74
The Policy of Hypocrisy and Deceit	76
Trade Union Policy After 1935	78

Exhibit "E"—(Continued.)

Contents—(Continued)

	Page
Section II. Evidence Relating to the Alien's Membership in and Affiliation With Communist Party and Associated Organizations	82
A. Harry Renton Bridges, His Personal History and Connection With The Labor Movement	82
B. The "Waterfront Worker"	88
C. Cooperation With the Communist Party, And With the M. W. I. U., And Association With Their Members During The 1934 Strike	98
D. Harry Lundeberg	104
E. James D. O'Neil	107
F. Lee F. Barlow	118
G. Richard and Dawn Lovelace	119
H. The Madison Square Garden Meeting	123
I. Howard Rushmore	132
J. Ezra F. Chase	133
K. Sam Diner	132
L. Nathaniel Honig	141
M. Thomas Laurence	145
N. Maurice J. Cannalonga	147
O. Richard A. St. Clair	152
P. Robert P. Wilmot	155
Q. John Oliver Thompson	159
R. Amos Floyd Kelley	160
S. The North American Aviation And International Woodworkers Of America Strikes	161
T. Labor Spies And Trade Union Ethics	165
U. Bridges As A Good Labor Leader	166
V. Attitude of Bridges Toward The Communist Party, Its Policies And Affiliated Organizations	168
Section III. Bridges' Membership in the Industrial Workers of the World in 1921, as a Ground for Deportation	170
Section IV. Proposed Findings of Fact, Conclusions of Law and Order	177
Findings of Fact	178
Conclusions of Law	179
Order	180
Appendix—Memorandum of Decision Wiretapping Motion	182
Index of Witnesses	186
Index of Abbreviations	187

Exhibit "E"—(Continued.)

Immigration and Naturalization Service

Department of Justice

File No. 55973/217

In the Matter of Harry Renton Bridges

MEMORANDUM OF DECISION

INTRODUCTORY

HISTORY

The present is the second proceeding looking toward the deportation of Harry Renton Bridges. On March 2, 1938, a warrant was issued by the Assistant Secretary of Labor for the arrest of Bridges upon the ground that it appeared that he was subject to deportation under Federal Statutes. A hearing followed which opened on July 10, 1939, before James M. Landis, Dean of the Harvard Law School, who had been appointed trial examiner for the purpose of the hearing, and closed Sept. 14, 1939. Findings and conclusions were transmitted to the Secretary of Labor under date of Dec. 28, 1939, containing a final conclusion as follows: "The evidence, therefore, establishes neither that Harry Renton Bridges is a member of or affiliated with the Communist Party of the United States of America." Upon the basis of this conclusion, the Secretary of Labor cancelled the warrant of arrest and dismissed the proceedings (1*) on January 8, 1940. As a result of the

* Page numbering appearing on page of original Sears Opinion.

Exhibit "E"—(Continued.)

decision of the Supreme Court of the United States in *Kessler v. Strecker*, 307 U. S. 22, the determination of the Secretary of Labor was confined solely to the relation of Bridges at the time the proceeding was instituted and being prosecuted, to an organization seeking and advocating the overthrow of the Government by force and violence. Evidence offered by the Government on that proceeding as to Bridges' relations to the Communist Party previous to the institution of the proceeding on March 2, 1938 was material only so far as it was probative of a membership or affiliation at the time of the investigation.

Following the dismissal of the warrant, Congress amended the law relating to the deportation of aliens, so as to provide for the deportation of one "who was at the time of entering the United States, or, has been at any time thereafter, a member of, or affiliated with such an organization."

Subsequent to the enactment of this amendment, the Attorney General¹ directed the Federal Bureau of Investigation to make an investigation to determine whether, under the new provision of the Alien Registration Act, grounds existed for reopening the deportation proceedings against Bridges. A report having been made by the Federal Bureau of Investigation, a warrant was issued by the Attorney General under date of February 14, 1941.

(1) The Immigration & Naturalization Service was transferred from the Department of Labor to the Department of Justice pursuant to the Act of June 28, 1940 (54 Stat. 675; 8 U. S. C. 458).

Exhibit "E"—(Continued.)

Bridges was arrested, and the (2) undersigned was appointed by the Attorney General an Inspector in the Immigration & Naturalization Service for the purpose of presiding at the hearing, held as prescribed by the rules and regulations of the Department of Justice.²

THE APPLICABLE STATUTE.

The Alien Registration Act of Oct. 16, 1918, as amended by the Acts of June 5, 1920 and June 28, 1940, (8 USCA 137), so far as relevant to this proceeding is as follows:

Any alien who was at the time of entering the United States, or has been at any time thereafter, a member of any one of the classes of aliens enumerated in this section of this act, shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in this subchapter. The provisions of this section shall be applicable to the classes of aliens mentioned in this act, irrespective of the time of their entry into the United States.

The section of the Act referred to in the above excerpt provides:

Aliens who * * * are members of or affiliated with any organization, association, society, or group that believes in, advises, advocates, or

(2) Sec. 150.6 of the Regulations of the Department of Justice, Immigration & Naturalization Service.

Exhibit "E"—(Continued.)

teaches: (1) The overthrow by force or violence of the Government of the United States * * * (3) The unlawful damage, injury or destruction of property, or (4) Sabotage—

Aliens who are members of or affiliated with any organization, association, society, or group (3) that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in paragraph (d).*

The giving, loaning, or promising of money or anything of value to any organization, association, society, or group of the character above described shall constitute affiliation therewith; but nothing in this paragraph shall be taken as an exclusive definition of advising, advocacy, teaching, or affiliation.

THE PRESENT PROCEEDING AND THE CHARGES CONTAINED IN THE WARRANT OF ARREST

The warrant of arrest instituting this proceeding, dated Feb. 22, 1941, directed that Harry Renton

* Paragraph (d) describes written or printed matter advising, advocating or teaching (1) The overthrow by force or violence of the Government of the United States * * * (3) The unlawful damage, injury or destruction of property, or (4) Sabotage—

Exhibit "E"—(Continued.)

Bridges be taken into custody and be granted a hearing to enable him to show cause why he should not be deported, in conformity with the above quoted law. The reasons assigned in the warrant were:

(a) After entering the United States he has been a member of or affiliated with an organization, association, society, or group that believes in, advises, advocates, or teaches the overthrow by force or violence of the Government of the United States; and

(b) That after entering the United States he has been a member of or affiliated with an or (4) ganization, association, society, or group that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue or display, written or printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States.³

Pursuant to this warrant, the alien was taken into custody, as directed, on February 14, 1941, released under bond of \$3,000.00, and a hearing before myself, acting as Presiding Inspector, was held in San Francisco, California, beginning March 31, 1941, and ending June 12, 1941. The evidence

(3) Gov. Ex. #1.

Exhibit "E"—(Continued.)

adduced at the hearing is reported in forty-four volumes, one for each hearing day, totaling 7,546 typewritten pages. In addition, the Government introduced 297 exhibits, and the alien 62.

During the course of the proceeding, the Government amended its warrant, in conformance with Departmental rules and regulations,⁴ to include two additional charges. These additional charges are:

(1) That he is an alien who, after entering the United States, became a member of an organization, association, society, or group, which advised, advocated and taught the unlawful damage, injury or destruction of property and sabotage; and

(2) That after entering the United States he became a member of an organization, association, society or group that circulated and distributed written or printed matter advising, advocating or teaching the unlawful damage, injury, or destruction of property and sabotage.⁵

The regulations of the Department of Justice relating to hearings such as the instant one require:

As soon as practicable after the hearing has been concluded, the Presiding Inspector shall prepare a memorandum setting forth a sum-

(4) Sec. 150.6 (1) of the Regulations of the Department of Justice, Immigration & Naturalization Service.

(5) Tr. 2482.

Exhibit "E"—(Continued.)

mary of the evidence adduced at the hearing, his proposed findings of fact and conclusions of law and a proposed order.⁶

THE PROCEDURE

Representation of parties

Throughout the hearing, the Government was represented by Albert Del Guercio of Los Angeles, California, Paul V. Myron and Clarence N. Goodwin of Washington, D. C.

The alien was represented by Carol King of New York City and Richard Gladstein and Aubrey Grossman of the firm of Gladstein, Grossman, Margolis, and Sawyer of San Francisco, California.

The hearings were held in a courtroom of the Federal Court House on Mission Street in the City of San Francisco, California.

The public was admitted to the hearing at all times so far as the accommodations of the room permitted. Representatives of the Press were present and were assigned special facilities. (6)

The subject and scope of this proceeding -

This is not a judicial proceeding. It is an administrative proceeding in an Executive Department of the Government, looking toward executive action.⁷ It is not a criminal prosecution and rules

(6) Sec. 150.7 (a) of the Regulations of the Department of Justice, Immigration & Naturalization Service.

(7) Pearson v. United States, 202 U. S. 281; Zakonaite v. Wolf, 226 U. S. 272.

Exhibit "E"—(Continued.)

of criminal procedure and practice are inapplicable.⁸ The only subject of investigation is whether Bridges has been since his arrival in the United States a member of, or affiliated with, subversive organizations as charged. Should he be found to come within a deportable class, he is not thereby adjudged in such a proceeding as this to have been guilty of criminal or even reprehensible conduct. A determination against him and a finding of ground for deportability simply means that he is found to have violated a condition of the privilege of remaining in this country, which he has been enjoying.⁹ The investigation is not one of trade union practices or the merits or defects of trade unionism. The workers' movements, their organizations, their committees, their ambitions, their purposes and aims, the great trade union organizations such as the American Federation of Labor and the Congress of Industrial Organizations are not, nor is any one of them the subject of this investigation. The statute does not relate to any of these matters. Unless there is a purpose and intent on the part of an organization to overthrow the Government by force and violence, or unless there is a distribution by the organization of literature advocating such overthrow, or unless there is an advocacy of the illegal destruction of property or an

(8) *United States ex rel. Bilokumsky v. Tod*, 263 U. S. 149; *Bugajewitz v. Adams*, 228 U. S. 585.

(9) *Fong Yue Ting v. United States*, 149 U. S. 698, 730; *Helvering v. Mitchell*, 303 U. S. 391, 399.

Exhibit "E"—(Continued.)

advocacy of sabotage, membership in or affiliation with it is in itself immaterial. This should be clearly understood, for a misapprehension of the scope of this proceeding might result in injustice to innocent, well-intentioned, and useful groups of citizens. On the other hand, the fact that the alien has long been a member of trade unions whose loyalty to our Government is unchallenged and, doubtless, has performed services of value to his fellow members, and has long had, and continues to have the personal respect and confidence of the members of such organizations does not help him if the basis of the privilege of remaining here has been violated by him in any respect.

Membership in or affiliation with the Communist Party and certain of its subsidiaries or allies, notably the Trade Union Unity League, the Marine Workers Industrial Union, and membership in the Industrial Workers of the World constitute the conduct claimed by the Government in this proceeding, as grounds for deportation, pursuant to the statute.

The burden of proof to establish facts alleged is here, as generally, on the person asserting them; in this proceeding the burden of proof is on the Government,¹⁰ and facts to form a basis for determination must be established by the greater weight of evidence.¹¹ (8)

(10) United States ex rel. Bilokumsky v. Tod, 263 U. S. 149, 153.

(11) Whitfield v. Hanges, 222 Fed. 745, 751.—

Exhibit "E"—(Continued.)

Subpoenas

Subpoenas were issued in every case where a request, in accordance with the rules of the Department, was presented to me, except in the case of requests for the examination of Lemuel B. Schofield, Special Assistant to the Attorney General in Charge of Immigration and Naturalization; Francis Perkins, Secretary of Labor, and Gerald D. Reilly, Solicitor of the Department of Labor, and for the production of documents by them from Government archives and files.

The ground for alien's applications for such subpoenas was his claim that this proceeding so far as it related to Bridges' connection with the M. W. I. U., the I. L. D., the T. U. U. L., the I. W. W. denied Bridges the equal protection of the laws, amounting to a denial of due process, in violation of the Fifth Amendment of the Constitution in that, since 1920, the Immigration and Naturalization Service has held that membership in the Industrial Workers of the World did not render an alien deportable, and that since January 3, 1934, has ruled that membership in or affiliation with the M. W. I. U. and I. L. D. and T. U. U. L. did not render an alien deportable, and despite the presence in the country of many thousands of members of such organizations, since 1920, no proceeding has been instituted nor any action taken to carry forward any proceeding theretofore instituted to deport any alien for membership in or affiliation

Exhibit "E"—(Continued.)

with the Industrial Workers of the World, and that since January 3, 1934, no proceeding has been instituted, despite the presence in the country of thousands of alien members of such (9) organizations, nor any action taken to carry forward any proceeding theretofore instituted to deport any alien for membership in or affiliation with the Marine Workers Industrial Union, the International Labor Defense or the Trade Union Unity League, whereas the present proceeding against Bridges is based upon such memberships or affiliations.

The requests for these subpoenas were denied, first, because I was of the opinion that I was without power to call before me the present head of the Immigration Service in the Department of Justice, or the present head or Solicitor of the Department of Labor, in which Department the Immigration Service was previously included, and, second, because any official ruling of a Department or Service of the Government would be a matter of public record and could be otherwise produced, and, third, because in my opinion the evidence sought was wholly immaterial, the fundamental questions of the character of the organizations mentioned being a matter of fact, open to proof in each particular case. The constitutional point I refer to elsewhere.¹²

Production of documents

Requests for the production of documents, al-

(12) See p. 14, post.

Exhibit "E"—(Continued.).

legedly in the possession of the Department, were made in the open hearing.¹³ These requests I denied. My opinion is that as an Inspector in the Department, I was not empowered to require the Attorney General, the head (10) of the Department, to produce any documents. The law permits an alien whose deportation is sought to produce evidence, and the rules of the Department provide for the issuance of subpoenas, but this is far from permitting the alien to explore the archives of the Department. I asked counsel for the Government to call these requests to the attention of the Attorney General. Counsel reported that the Attorney General had entrusted to Counsel the determination, as to whether particular documents in the possession of the Department should be produced. On one occasion, an assertion was made by representatives of the Government that no such documents were in the possession of the Government.¹⁴ Such assertions I unqualifiedly accepted. On other occasions, the Government Counsel refused to produce statements of witnesses taken by agents of the Federal Bureau of Investigation on the preliminary investigation.¹⁵

(13) Tr., pp. 19-23, general motion for examination of Government's evidence; Tr., pp. 647-658, request for Chase's prior statements to F. B. I.

(14) See p. 61, fn. 11, post.

(15) Tr., 647-658.

Exhibit "E"—(Continued.)

Rules of evidence

The common law rules governing the admissibility of evidence were not strictly applied; they are not applicable in a general sense to a proceeding of this character.¹⁶ In fact, common law rules were not insisted upon by either party. Hearsay was freely admitted. At times, objection was made to hearsay of higher degree, that is hearsay of hearsay, or even further removed. The fact that testimony presented is hearsay (11) bears upon its probative value. This element I have tried always to consider.

The only rules applied to the admission and exclusion of evidence rest on fairness and on relevancy. In the application of the principle of fairness, I could only be guided by my own judgment, in which experience had its part. In the few instances where I rejected proffered evidence, it was in my opinion, unsubstantial. In determining what evidence is substantial I have applied the test given by Mr. Chief Justice Hughes in *Edison Consolidated Co. v. National Labor Relations Board*, 305 U. S. 197, 229—"Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

AFFILIATION

The statute upon which this proceeding is based makes affiliation with, as well as membership in,

(16) Wigmore Evidence (3rd Ed.), p. 54, et seq.

Exhibit "E"—(Continued.)

certain organizations a ground for deportation. An accurate definition of this word at this time is certainly not necessary and very likely impossible. Its ultimate definition may be reached when a sufficiently large number of cases have determined whether particular relationships of great variety are, or are not, within the content of the word. Then the line of demarcation may be clearly pricked out. Today that stage has not been reached. This is not an unusual problem of judicial construction.

Affiliation is clearly a word of broader content than membership, and of narrower content than sympathy. (12) Generally, there will be some continuity of relationship to bring the word into application. This is, however, not necessarily so, for the statute itself provides that the giving, loaning, or promising of money or anything of value to any organization, association, society, or group of the character described in the Act, shall constitute affiliation, and further provides that this language shall not be taken as an exclusive definition of advising, advocacy, teaching, or affiliation. 8 U. S. C. A., Section 137 (f). It is to be noted that the very acts referred to in the statute are declared to be themselves an affiliation and not evidence of affiliation. Here permanence is not necessary under the statutory definition. The following cases are illustrative of conduct amounting to affiliation:

Wolek v. Weedon, 58 F. (2d) 928.

Kjar v. Doak, 61 F. (2d) 566.

Exhibit "E"—(Continued.)

Sorquist v. Ward, 83 F. (2d) 890, affirming
11 Fed. Supp. 525.

U. S. ex rel. Yokinen v. Commissioner,
57 F. (2d) 707.

U. S. ex rel. Fernandas v. Commissioner,
65 F. (2d) 593.

Branch v. Cahill, 88 F. (2d) 545.

Examples of conduct not amounting to affiliation
occur in—

Kettunen v. Reimer, 79 F. (2d) 315.

Tolsky v. Wilson (unreported) opinion of
Hand, J., in the Southern District of
New York, filed June 22, 1920.¹⁷ (13)

Affiliation may doubtless be shown circumstan-
tially. Assisting in the enterprises of an organiza-
tion, securing members for it, taking part in meet-
ings organized and directed by or on behalf of
the organization, would all tend to show affiliation.
The weight to be given to such evidence is, of
course, determined by the trier of the fact. It is
unnecessary further to define the word.

CONTENTIONS OF THE ALIEN OF A CON- STITUTIONAL AND LEGAL NATURE

A. Constitutional

During the hearing and in his brief the alien
has raised certain constitutional questions which I
consider briefly.

(17) See Al. Ex. 12, p. 11.

Exhibit "E"—(Continued.)

1. Due process of law, fifth amendment

Insufficient time to prepare case.—The alien seeks to predicate a violation of the constitutional guaranty on the alleged shortness of time given him to prepare his case before the hearing began. The Attorney General fixed March 31, 1941 as the date of the hearing. Bridges was served with the warrant of arrest and notified of the date of the hearing on February 14, 1941. It is obvious that ample time for preparation was thus allowed.

Denial of equal protection of the law.—Bridges claims that to deport him on a charge of membership in the I. W. W. or membership in or affiliation with the M. W. I. U. would violate the constitutional guaranty because, he contends, no alien has been deported on such grounds for many years. (14)

The Congress enacted the law. If the I. W. W. or the M. W. I. U. falls within the classes of societies described in the law and Bridges was a member of or affiliated with them or either of them, no general practice order of a Department or inaction of authorities could give him immunity. Laws are not so easily set aside. Whether the I. W. W. or the M. W. I. U. comes within the description presents a question of fact. A ruling by the Secretary of Labor in 1934 that such proceedings should not be prosecuted if based solely on membership in or affiliation with the M. W. I. U. would have been merely a practice direction which could be revoked at any time. As to the M. W. I. U., it should be noted that

Exhibit "E"—(Continued.)

as this organization was dissolved in 1935, and as the law, as it stood before June 28, 1940, confined deportation proceedings such as the present one to aliens who, at the time of the institution of the proceeding were members or affiliates of described organizations, there could be no proceeding having reference to the M. W. I. U. from the time of its dissolution in 1935 to the 28th day of June, 1940. For factual as well as legal reasons, I conclude that the alien's point is not well taken.

General unfairness of the proceeding.—Here, of course, the challenge is to the hearing generally. The reported stenographic minutes are presented unrevised. I believe the hearing was a fair one, but the question of its fairness can be ultimately determined better by the authorities reviewing the case than by myself. (15)

2. Double jeopardy, fifth amendment

On account of the 1939 hearing the alien contends that he has been twice put in jeopardy for the same offense. This contention attacks the validity of the entire proceeding. It is a claim upon which as a presiding inspector appointed to conduct the hearing and file a memorandum, I believe that I am not called upon to pass. I cannot review the action of the Attorney General in issuing the warrant.

Were this question before me, I would reject the contention. This is a civil, as distinguished from a criminal, proceeding as has already been pointed out. No jeopardy at all is involved for that word

Exhibit "E"—(Continued.)

has application only to prosecutions of a criminal nature. An order of deportation is but the revocation of a privilege, voluntarily granted.¹⁸

3. Ex post facto law: Art. I, Sec. 9, U. S. Const.

The alien contends that the amendment of the Alien Registration Act by the act of June 28, 1940 (8 U. S. C. A. 137) is ex post facto as related to this proceeding. The Act broadened the grounds of deportation from membership in or affiliation with certain organizations described in the Act, at the time the proceeding was instituted,¹⁹ to such membership or affiliation at the time of entry into the country, or at any time thereafter.

The constitutional provision applies only to criminal (16) laws. The statute here involved is not a criminal law as already shown. What I have written as to the alien's contention as to double jeopardy is pertinent here.²⁰

B. Res Judicata

The alien seeks a dismissal of this proceeding on the principle of res judicata. He relies upon the dismissal of the 1939 proceeding. The Attorney General on February 14, 1941 instituted this proceeding and directed that a hearing take place. The evidence presented by the government before me is wholly different from that offered in 1939. Not a single witness sworn on the part of the government

(18) *Helvering v. Mitchell*, 303 U. S. 391, 399.

(19) *Kessler v. Strecker*, 307 U. S. 22.

(20) *Mahler v. Eby*, 264 U. S. 32.

Exhibit "E"—(Continued.)

in this proceeding was sworn in the hearing of 1939. The charge stated in the warrant is different, for while it includes the charge which was the subject of the 1939 proceeding, it also includes a broader range, namely, membership in or affiliation with the organization at any time from the date in 1920 of the entry of the alien into this country. It is, however, not necessary to consider this contention as an original matter. It has been established by controlling authorities that the doctrine of res judicata is not applicable in a technical sense to deportation proceedings.²¹ (17)

SECTION. I. THE HISTORY, NATURE, OBJECTS, AND METHODS OF THE COMMUNIST PARTY OF THE UNITED STATES

A. ORIGIN

In 1919, representatives of the Communist Parties of eight countries convened at Moscow, Russia, in what was termed the First Congress of the Communist International and laid the foundation for "A single World Party of the revolutionary proletariat and * * * formulated its basic task as the struggle for the proletariat in the form of Soviets throughout the world."²² The Communist Party of the United States became a "section" of this organization in its first year.²³

(21) *Pearson v. Williams*, 202 U. S. 281; *White v. Chan Wy Sheung*, 270 Fed. 764.

(22) Gov. Ex. 228.

(23) Tr. 53-55; see also p. 21, post.

Exhibit "E"—(Continued.)

The 1919 Moscow Meeting laid the foundation of the "Third International," so called because it was the third attempt to form an international organization of workers. The "First International" was established at a meeting in London in 1864 and adopted the "Manifesto" of Marx & Engels, as its fundamental concept.²⁴ The "Second International" established at Paris in 1889, has been repudiated by the "Third International" as a renegade movement. The "Third International" considers itself the successor to the "First International," and condemns the "Second International" as "Undermined by opportunism and damaged by the treason of its leaders who have taken the side of the Bourgeoisie * * *²⁵ (18)

The Second World Congress of the "Third International" met in Moscow in July and August 1920, adopted the "Theses and Statutes of the Third (Communist) International" and enacted twenty-one rules as conditions for joining the Communist International. I summarize the substantial parts of the twenty-one rules as far they bear upon the issues in this proceeding.²⁶

Agitation and propaganda should correspond with the program of the Third International, and the entire Party Press should be edited by reliable Communists who have proved their loyalty to the cause of the proletariat revolu-

(24) Gov. Ex. 91; Gov. Ex. 103.

(25) Gov. Ex. 94.

(26) Gov. Ex. 94, pp. 27-32.

Exhibit "E"—(Continued.)

tion. Communists should avail themselves of every opportunity to denounce the Bourgeoisie and its Agents and all other reformists, in the press, popular meetings, Labor Unions, etc.

The class struggle in almost every country of Europe and America is entering the phase of civil war. Under such conditions the Communists can have no confidence in bourgeois laws. They should create everywhere a parallel illegal apparatus, which at the decisive moment should do its duty by the party, and in every way possible assist the revolution. In every country where, in consequence of martial law or of other exception laws, the Communists are unable to carry on their work lawfully, a combination of lawful and unlawful work is absolutely necessary.

A persistent and systematic propaganda and agitation is necessary in the army, where Communist groups should be formed in every military organization. Wherever, owing to repressive legislation, agitation becomes impossible, it is necessary to carry on such agitation illegally. But refusal to carry on or participate in such work should be considered equal to treason to the revolutionary cause, and incompatible with affiliation with the Third International.

Every party desirous of affiliating with the Third International must renounce all social patriotism and social pacifism and should dem-

Exhibit "E"—(Continued.)

onstrate to the workers the necessity for revolutionary overthrow of capitalism, and the parties must also carry on a persistent and systematic work in the Labor Unions and other Mass Organizations forming Communist groups within the unions designed to win them over to Communism. Such parties must also be committed to a complete democratic centralization of power and to assistance to the Soviet Republics against all counter revolutionary forces and propaganda, even to the extent of propagandizing disloyalty among troops to be sent against Workers Republics.

The program of any such Party must be in accordance with the resolutions of the Communist International and must be approved by that body. Further, all resolutions of the Communist International and its Executive Committee are binding upon all parties joining the Communist International and, further, the leading organs of the Press are bound to publish the important documents of the Communist International.

The Communist Party of the United States had its inception in 1919, as a result of a split in the Socialist (20) Party.²⁷ This early party was divided into factions which were merged in 1921 into the

(27) Gov. Ex. 164, p. 794; Gov. Ex. 97, p. 1; Tr. 53-55.

Exhibit "E"—(Continued.)

"Communist Party of America."²⁸ This organization declared itself to be a "section" of the Communist International;²⁹ and adopted a program in conformance with the program and policies of the Communist International, declaring:

The Communist Party of America, section of the Communist International, is that part of the working class which is most advanced, intelligent, self-sacrificing, and class conscious. It is, therefore, the most revolutionary part of the working class. The Communist Party has no other interests than those of the working class as a whole. It differs from the general mass of workers in that it takes a comprehensive view of the entire historical development of the working class. At every turn of the road, it endeavors to defend the interests, not of separate groups or trades, but of the entire working class. The Communist Party is the organized political power by means of which the more advanced part of the working class leads the whole proletarian and semiproletarian mass.

During the proletarian dictatorship, the

(28) The two factions which merged in 1921 were "The United Communist Party" and "The Communist Party of America." See Gov. Ex. 98. "The United Communist Party" was itself the result of a fusion in the previous year of the "Communist Party" and the "Communist Labor Party." See Gov. Ex. 97; Gov. Ex. 99, pp. 483-484.

(29) Gov. Ex. 98, pp. 1, 5.

Exhibit "E"—(Continued.)

Communist Party will continue to systematically direct the work of the Soviets and revolutionized industrial unions. The Communist Party (21) as the vanguard (vanguard) of the proletarian movement will direct the struggle of the entire working class on the political and economic fields. It will guide the proletariat in the field of education and social life. The Communist Party must be the animating spirit in the Soviets, revolutionized industrial unions, and in all proletarian organizations.

* * *

The Communist Party will systematically and persistently propagate the idea of the inevitability of and necessity for violent revolution and will prepare the workers for armed insurrection as the only means of overthrowing the capitalist state.³⁰

Due to the pressure of Government prosecution of members of subversive groups, the early Communist parties in the United States carried on their activities underground.³¹ But in late 1921, the "Workers Party of America" was organized as the legal expression of the Communist Party of America.³² In 1923, upon instructions from the Communist International, the Communist Party of America

(30) Gov. Ex. 98, pp. 6-7.

(31) Gov. Ex. 98, p. 7; Gov. Ex. 164, p. 795; Gov. Ex. 135, p. 292.

(32) Gov. Ex. 164, p. 795; Gov. Ex. 108, preface, and Gov. Ex. 111, p. 5; Gov. Ex. 135, p. 295.

Exhibit "E"—(Continued.)

was dissolved and the Workers Party of America became the sole exponent of the Communist movement in the United States, functioning as a section of the Communist International.³³ In 1925, its name was officially changed to the "Workers (Communist) Party, the American Section of the Communist International."³⁴ and it openly declared its goal to be revolutionary overthrow of capitalism and the substitution therefor of a Soviet Government.³⁵ In 1929, the last dissentient faction within the party, the so-called "Lovestone Group," was liquidated and the Party was renamed "The Communist Party" or "The Communist Party of the U. S. A."³⁶ It still retains this name.

B. WITNESSES AND DOCUMENTS

The foregoing outline of the origin of the Communist Party in the United States is based upon the oral testimony of a number of witnesses and upon a mass of documentary evidence introduced by the Government. A statement of the identity of the witnesses and their opportunities for gaining knowledge of the subject seems pertinent here.

(33) Gov. Ex. 135, p. 295; Gov. Ex. 108, p. 20; Gov. Ex. 109, p. 5; Gov. Ex. 99, p. 484; Gov. Ex. 112, p. 6; Gov. Ex. 135, p. 295.

(34) Gov. Ex. 135, p. 296; Gov. Ex. 104, pp. 26, 27.

(35) Gov. Ex. 99, pp. 484-485.

(36) Gov. Ex. 135, pp. 296, 299, 300; Gov. Ex. 129, pp. 2, 17; Gov. Ex. 130, pp. 18, 19; Tr. 57-58.

Exhibit "E"—(Continued.)

Benjamin Gitlow is at present a lecturer and writer. He was a member of the Communist Party of the United States continuously from its inception in 1919 through its various stages, until 1929, when he was expelled due to his refusal to apply the dictates of Stalin and the Comintern to the policy of the American Party.³⁷

He has held various important Party positions. In the American Party he was a member of the Central (23) Executive Committee (C. E. C.), the Political Committee (Polcom or Politburo), and a member of the Secretariat, and in 1929 he was its General Secretary. In the Communist International (Comintern), he has been a member of the Executive Committee (E. C. C. I.) and of the Executive Committee of the Red International of Labor Unions (R. I. L. U. or Profintern), as well as of the "presidium" of both of those organizations. He was the Communist Party candidate for Vice President of the United States, both in 1924 and 1928, and was once a candidate of the Communist Party for Mayor of the City of New York. In 1919, he was convicted in the State of New York on a charge of criminal anarchy³⁸ and was in prison for three years before being pardoned by Governor Smith.

Gitlow identified a large number of documents

(37) This expulsion was probably a part of the purge which liquidated the so-called "Lovestone Faction." See Gov. Ex. 164, p. 793.

(38) See *Gitlow v. New York*, 268 U. S. 652.

Exhibit "E"—(Continued.)

introduced in evidence as Government exhibits. These consisted chiefly of minutes of the meetings of the Central Executive Committee, the Political Committee and the Secretariat of the American Party, copies of which had come to him in the regular course as a member of those bodies. He also identified many pamphlets and books as official expressions of the Communist Party or expressions of Communist leaders circulated and distributed by the Party, and also documents setting forth the management and control of Communist Party printing and publishing agencies. His intimate association with the Communist Party of the United States and with the Communist International qualified him to testify concerning the history and development of the (24) Communist movement, its aims, objectives, and methods.

In view of this witness's close association with the Communist Party, his evident intelligence and the fact that his testimony is corroborated by documents and oral statements of other witnesses, I have no doubt as to the general accuracy of his testimony with reference to the period during which he was a member of the Party. His testimony relating to a subsequent period, supplemented by the other evidence in the record, shows that while there were tactical changes and fluctuations in policy to meet the needs of current situations, the fundamental policies and ultimate objectives have not changed in any manner material to the issues in this case.

Exhibit "E"—(Continued.)

The witness, Ezra F. Chase, has been treated elsewhere in connection with his testimony as to the alien's relations to the Communist Party.³⁹ It is sufficient here to say that Chase's varied activities and responsible positions in the Communist Party in Los Angeles qualify him to testify concerning the organization, principles, and activities of the Party, and to identify various documents as having been circulated and distributed by the Communist Party. His testimony in these respects is amply supported by that of other witnesses and by documentary proof.

Farrel Schnering, like Benjamin Gitlow, gave no direct evidence concerning the alien himself, but testified only as to the aims and objectives of the Party, its organization and program and the activities carried (25) on by the Party itself, and some of its subsidiary organizations. Although his testimony had a tendency toward prolixity, it showed a thorough knowledge of the terminology and theory of Communist principles and strategy.

Schnering first became a member of the Communist Party in January 1930, after having had a rather extensive grounding in Socialistic Theory. He left the Party in May 1930, returned to it in June 1931, and remained until December 1935, when he was expelled for criticizing some of its policies. Shortly after his induction into the Party he became active in the International Labor Defense

(39) See page 133, post.

Exhibit "E"—(Continued.)

(I. L. D.) Organization³⁹ in the State of Wisconsin, and was its State Secretary upon assignment of the Communist Party. He attended the National Nominating Convention of the Communist Party in 1932 as a delegate from the Milwaukee Section, and in the same year attended a National Convention of the I. L. D. in Cincinnati. He was a director of the Milwaukee Workers School, where he taught at the direction of the District Executive Committee of the Communist Party. He participated in organizing the American League Against War and Fascism, in the State of Wisconsin,⁴⁰ assisted in the organization of the National Students League,⁴¹ and had charge of the Communist Party activities on the campus of the University of Wisconsin. He was editor of the newspaper "Wisconsin Voice of Labor," the (26) official publication of the Communist Party for the State of Wisconsin, named to that position by the District Committee of the Party. In 1934, he was the candidate of the Communist Party for the office of Attorney General of the State of Wisconsin. At the time of his expulsion from the Party in December 1935, he was a member of the District Political Bureau.

The testimony of Schnering is concerned chiefly with various Front Organizations of the Communist Party,⁴² with which he was obviously familiar.

(39) See page 72, post.

(40) See page 73, post.

(41) See page 74, post.

(42) See page 66, post.

Exhibit "E"—(Continued.)

In its general aspects it is corroborated by that of other witnesses and by the documentary evidence. He identified various items of literature which to his knowledge were circulated and distributed by the Communist Party. His oral testimony leaves no doubt that he was conversant with the terminology, literature, and doctrine of Communism and technique of Communist organization.

Howard Rushmore is at present a newspaper reporter associated with the New York Journal and has been a member of the American Newspaper Guild since 1935. He has written a number of articles chiefly on the subject of Communism for the American Magazine, Readers Digest, American Mercury, and the Christian Herald. He joined the Communist Party in the Fall of 1934, at St. Louis, Missouri. His activities in the Party have been largely in the newspaper field and in connection with the Young Communist League (Y. C. L.) which he described as the Junior Section of the Communist Party. (27)

His first position in connection with his Communist activities was as Managing Editor of the Young Worker, official organ of the Young Communist League. Thereafter, during the summer of 1936 and until March 1937, he was in North and South Dakota as organizer for the Young Communist League. At the same time, he edited a special farm page for the Daily Worker, official newspaper of the Communist Party, published in New York. He was also during this period for a short

Exhibit "E"—(Continued.)

time organizational secretary of the Communist Party of Iowa. From about May 1937 until December 1939, he was in New York on the staff of the Daily Worker, in various capacities, including that of Assistant Editor and Managing Editor of the magazine section of the Sunday Worker, the Sunday issue of the Daily Worker. He left the Party in December 1939, owing to fundamental difference over policy. His abandonment of the Party was precipitated by his refusal to review the motion picture, "Gone With the Wind" as Fascist propaganda.

The testimony of this witness concerns itself chiefly with the policies of the Communist Party with regard to its newspaper publications and the manner of exercising control over them and giving them the "Party Line." He identified a large amount of literature which he testified was circulated and distributed by the Communist Party.⁴³

The witness Rushmore impressed me as being forthright and as qualified, through his background of activity in the Communist Party, to testify with regard to the matters disclosed by him. His testimony to a great extent is corroborated by that of other witnesses and by documentary proof.

The witness, Nathaniel Honig, is considered elsewhere with reference to testimony specifically asso-

(43) He gave one item of evidence tending to connect the alien with the Communist Party. This item is treated at page 132, post.

Exhibit "E"—(Continued.)

ciating the alien with the Communist Party.⁴⁴ While some of his testimony referring directly to Bridges has been contradicted and some impeaching evidence presented, I find in those circumstances no reason to disregard entirely his general testimony of the subject of Communism, with particular reference to the T. U. U. L. and the M. W. I. U. His qualifications in this respect are set forth elsewhere.⁴⁵ My attitude toward the testimony of this witness has been to give credence only to those portions which are supported by other credible evidence and circumstances.

The witness, John Oliver Thompson, has also been treated in another section of this memorandum.⁴⁶ Aside from the testimony referring specifically to the alien, he gave some evidence relating generally to the Communist Party, The Y. C. L., The New York Workers Schools, and The Marine Workers Industrial Union. Since that evidence is largely cumulative and not necessary to the decision in this proceeding, I have largely disregarded it, although it is in the main corroborated by other evidence.

(29)

This witness was a member of the Y. C. L. from 1929 to 1932, at which time he was graduated into the Communist Party and remained a member until August 1935. During this period he was also active in the M. W. I. U. He went to the New York

(44) See page 141, post.

(45) See page 141, post.

(46) See page 160, post.

Exhibit "E"—(Continued.)

District Workers School and to the National Training School, both institutions of the Communist Party, where he was instructed in the Communist theory and practice, particularly with reference to work in the M. W. I. U. and Communist tactics for workers in the Marine Industry.

The testimony of William C. McQuiston, relating directly to the subject of the alien's membership in or affiliation with the Communist Party is treated in another section of this memorandum.⁴⁷

Aside from that testimony, he gave general evidence concerning the organization, objects and practices of the M. W. I. U. and the relation of that organization to the Communist Party. He was a charter member of that organization and remained with it until it was abandoned in 1935. He was a member of its National Bureau and National Fraction. Essentials of his testimony in this regard are borne out by the testimony of other witnesses and by documentary proof, and only so far can it be credited.

C. EVIDENCE RELATING TO ADVOCACY
OF THE USE OF FORCE AND VIOLENCE
TO OVERTHROW THE GOVERNMENT
OF THE UNITED STATES

The ultimate objective of Communism and of the Communist Party of the United States is that society shall be transformed from one based upon the concept (30) of capitalism to one purely socialistic. The Communist Party believes and teaches this

(47) See page 127, post.

Exhibit "E"—(Continued.)

transformation can be accomplished only by the overthrow of all Capitalist Governments, the United States Government being in that category, and the substitution therefor of a dictatorship of the proletariat, patterned after the Government of Soviet Russia. To the accomplishment of this end, all the more immediate aims and objectives of the Communist movement are directed. This objective, the Communist Party believes, advises, advocates, or teaches, cannot be accomplished by peaceful means, but only through the violent overthrow of existing Governments and the forceful suppression of the present "bourgeois" ruling classes.

The above concept is grounded primarily upon the famous "Manifesto" of Marx and Engels in 1848, which has since been interpreted and expounded by their followers in the Third International and particularly by Lenin. The "Manifesto" closes with the exhortation:

The Communists disdain to conceal their views and aims. They openly declare that their ends can be attained only by the forcible overthrow of all existing social conditions. Let the ruling classes tremble at a Communist revolution. The proletarians having nothing to lose but their chains. They have a world to win.

Workingmen of all countries, unite!¹⁴⁸

The witness Gitlow explained the interpretation currently placed upon the "Manifesto" as follows:

(48) Gov. Ex. 91, p. 44; see *Branch v. Cahill*, 88 F. (2d) 545.

Exhibit "E"—(Continued.)

A. The present Communist Party interpretation of that Manifesto is to lay down the policy (31) that it is necessary to overthrow, in order to overthrow capitalism it is necessary to do it forcibly through a violent revolution. They go even further and say that it also gives and it also approves or it also lays the basis for the manner in which the Communists will set up their own state as a dictatorship in order to change the social system from a Capitalistic one to a Communistic one.⁴⁹

This doctrine is expanded and expressed in "The Theses and Statutes of The Third (Communist) International," promulgated by the Second World Congress in 1920, in the following terms:

The Communist International makes its aim to put up an armed struggle for the overthrow of the International Bourgeoisie and to create an International Soviet Republic as a transition stage to the complete abolition of the state. The Communist International considers the dictatorship of the proletariat as the only means for the liberation of humanity from the horrors of capitalism. The Communist International considers the Soviet form of Government as the historically evolved form of this dictatorship of the proletariat.⁵⁰ * * *

The mass struggle means a whole system of

(49) Tr. 285-286.

(50) Gov. Ex. 94, p. 4.

Exhibit "E"—(Continued.)

developing demonstrations growing ever more acute in form, and logically leading to an uprising against the capitalistic order of Government.⁵¹ (32)

Lenin treats the doctrine as follows:

We have already said above and shall show more fully later that the teaching of Marx and Engels regarding the inevitability of a violent revolution refers to the Bourgeois state. It cannot be replaced by the proletarian state (the dictatorship of the proletariat), through "withering away", but, as a general rule only through a violent revolution. * * * The replacement of the Bourgeois by the proletarian state is impossible without a violent revolution. The abolition of the proletarian state, i. e., of all States, is only possible through "withering away."⁵²

Similar expressions in Communist literature are abundant.⁵³

(51) Gov. Ex. 94, p. 47.

(52) Gov. Ex. 182, pp. 19-20, State and Revolution, by V. I. Lenin, 1932, International Publishers Co., Inc.

(53) In the references here given, only a few of the most salient pages are referred to. In each case where the reference is a book or pamphlet, a reading of the entire document would be more satisfactory to an understanding of the doctrine expressed than mere consideration of the pages referred to. Gov. Ex. 93, pp. 6, 12-13; Gov. Ex. 105, p. 16; Gov. Ex. 182, pp. 9-34; Gov. Ex. 184, pp. 14-18; Gov. Ex.

Exhibit "E"—(Continued.)

The oral testimony of the various witnesses not only corroborates the documentary expressions of the teachings of the Communist Party but also demonstrates that the Party has been successful in its purpose of indoctrinating its adherents with its precepts. Some excerpts from the oral testimony in this respect are (33) set out and references to the transcript in the footnote⁵⁴ indicate other similar expressions.

Q. And were the aims and objectives of the Party also set up in this constitution?

A. Yes, surely.

Q. And what were the aims and objectives?

A. The aims and objectives of the Communist Party then set up were the revolutionary aims and objectives as outlined later by the Communist Internationale, that is, working for organizing the forces to overthrow the Government of the United States and to set up in its place a new form of Government to be known as the Dictatorship of the Proletariat, patterned after the form of the government of Soviet Russia.

Q. And how was that to be accomplished with regards to the use of force and violence?

95, pp. 36-37; Gov. Ex. 98, p. 7; Gov. Ex. 102, p. 62; Gov. Ex. 237, p. 20; Gov. Ex. 120, pp. 32, 54, 59, 62; Gov. Ex. 225, p. 453; Gov. Ex. 239, p. 57; Gov. Ex. 138, pp. 127, 142.

(54) Tr. pp. 51-55, 76, 93, 115-117, 250, 285, 363-364, 376-378, 381, 1393-1394, 1398, 1433-1434, 1863-1864.

Exhibit "E"—(Continued.)

A. Well, it was understood and stated very definitely in the programs that that could not be accomplished without engaging in a violent revolution which, if successful, would succeed in overthrowing the Government of the United States.

Q. You have mentioned the dictatorship of the Proletariat. Just what do you mean by that expression?

A. Well, the bolsheviks or the communists of Russia brought that term into prominence, and they declared that once a revolution took place the old state, or the old Government, had to be replaced by a new form of Government, which they called the Dictatorship of the Proletariat, not a democratic government, but the opposite, (34) a dictatorship, which should proceed to lay the basis for the transformation of society from a capitalist basis to a socialist basis.

Q. Does the Communist Party of the United States have any other aims than that which you have just stated?

A. All its aims are predicated to that ultimate aim.⁵⁵

Q. And ultimately use the unions for the purpose of accomplishing their ultimate aim and objective? A. Yes.

Exhibit "E"—(Continued.)

Q. Which is—

A (Interposing). The overthrow of the Government of the United States.

Q. How?

A. By force and violence, by the process of the revolution, the armed uprising of the American working class.

Q. And that is the aim and objective of the Communist Party as you know it?

A. That is the aim and objective of the Communist Party as I know it; and the Communists, of course, contend that this is a matter that has been decreed by history and history has cast them in the role of those particular people who are going to lead, guide, and direct their armed uprising which they speak of as the revolution.⁵⁶

Q. That is the overthrow of the Government of the United States (35)

A. That is right.

Q. By force and violence and substitute therefor the Soviet form of Government?

A. Yes. Let me interject here: This matter, of course—and violence is understood by every Party member. As a matter of fact, one of the conditions for membership in the party is that a worker has reached the point, or any person has reached the point, where he understands that force and violence must be used to smash and destroy the capitalist Gov-

Exhibit "E"—(Continued.)

ernment. That is what brings a man into the Communist Party.⁵⁷

* * * * *

Q. This was the Communist Party policy?

A. Oh, yes.

Q. To attract and influence this group of people to adopt their principles and ultimately join with them in the overthrow of the Government by force and violence?

A. That is right.⁵⁸

The foregoing excerpts from the documentary and oral proof are merely illustrative of a large mass of evidence of like effect. I conclude that this evidence establishes that the Communist Party of the United States believes in, advises, advocates, and teaches the overthrow, by force and violence, of the Government of the United States, within the terms of the statute relating to the deportation of aliens. The period covered by this evidence begins with the inception of the Communist Party of the United States, in 1919, and covers most of the years from that time until shortly prior to this proceeding. There is no evidence that the fundamental aims of the Party have changed since 1919, and I conclude that these continued substantially the same until the time of the hearing in this matter.

(57) Tr. p. 454.

(58) Tr. p. 461.

Exhibit "E"—(Continued.)

D. EVIDENCE RELATING TO THE DISTRIBUTION OF LITERATURE

The excerpts from literature quoted or referred to in the foregoing subdivision demonstrate that the Communist Party advocates the use of force and violence to overthrow the existing Government of the United States. The documents referred to were identified by the several witnesses as having been circulated and distributed by the Communist Party through its regular channels. Evidence was presented in the hearing, showing the manner in which these activities have been carried on and their extent. I therefore make reference to some of the more pertinent portions of the evidence in this respect.

The Communist Party of the United States has a literature department which prints, publishes and distributes approved writing through various channels controlled by the Party. Most of the Communist books and pamphlets introduced in evidence by the Government were printed and published by the Workers Library Publishers, Inc., and the International Publishers, Inc. The former was organized at the direction of the Polcom,⁵⁹ and incorporated under the laws of the State of New York.⁶⁰ The International Pub- (37) lishers is also a New York corporation organized by the Com-

(59) Gov. Ex. 29, Tr. pp. 134-135.

(60) Gov. Ex. 86; Tr. pp. 275-278; Gov. Ex. 87; Tr. p. 279; Tr. p. 1376.

Exhibit "E"—(Continued.)

munist Party of the United States, at the direction of the Comintern.⁶¹ References to other publishing and printing establishments of the Communist Party are set out in the footnote.⁶²

The Communist Party also prints and circulates a number of periodicals. Chief among these are the newspapers the "Daily Worker," official organ of the Communist Party, and the "Sunday Worker," published in New York City, and the monthly magazine, "The Communist."⁶³ On the Pacific Coast, the Communist Party had as its official newspaper the semi-weekly "Western Worker."⁶⁴ In 1936, this paper was evidently supplanted by the "Peoples World," a daily newspaper.⁶⁵

Various witnesses testified generally as to the extent and manner of carrying on the Communist Party program of propaganda through the publication of literature.⁶⁶

(61) Gov. Ex. 84; Gov. Ex. 85; Tr. pp. 271-275; Tr. p. 1429.

(62) Comprodaily Publishing Co., Gov. Ex. 81; Tr. pp. 267-269; Daily Worker Publishing Co., Gov. Ex. 82; Gov. Ex. 83; Tr. pp. 269-271; Prompt Press, Inc., Co., Gov. Ex. 195; Tr. pp. 801-802; Daily Publishing Co., Gov. Ex. 196; Tr. pp. 802-803; Freedom of the Press Co., Gov. Ex. 197; Tr. p. 802; F-A Printing Corp., Gov. Ex. 193; Tr. p. 800; F. & D. Printing Co., Gov. Ex. 194; Tr. p. 801.

(63) Gov. Ex. 75; Tr. pp. 256-260; Tr. p. 718; see also Gov. Ex. 72; Gov. Ex. 89; Gov. Ex. 90.

(64) Gov. Ex. 76.

(65) Gov. Ex. 76; Tr. pp. 464, 718, 777-778.

(66) Gov. Ex. 15; Tr. pp. 94, 373-375, 462, 1368-1371.

Exhibit "E"—(Continued.)

The extent to which Communist Party teachings has been carried on through the medium of printed matter (38) is also illustrated by extracts from a report made to the plenum of the Communist International, reprinted by the "Party Organizer," a publication of the Central Executive Committee of the Communist Party of the United States. In this report, there is given a summary of the progress made by the American Party in the publication and distribution of Party literature,⁶⁷ which the author summarizes as follows:

The lowest edition published this year was 4,000 and the highest 60,000. The 60,000 wasn't a one-cent pamphlet either. It was *Why Communism?* and retailed at 10c. We are preparing a new edition of the pamphlet at 5c. We expect to publish 250,000 during the year—starting with 100,000. We published 11 pamphlets on trade unionism and labor struggles. We published 4 Y. C. L. pamphlets. It is very interesting to say that the best distribution was received of the youth pamphlets. Ninety percent were sold. They were published in 20,000 to 25,000 editions. The Y. C. L. primarily handled the distribution.

As far as our theoretical literature is concerned, we have a great increase in interest in this type of literature. At the beginning of the crisis, about 50,000 pieces were published a year. In 1934, over 500,000 were issued. This

(67) Gov. Ex. 188, pp. 40-44.

Exhibit "E"—(Continued,)

shows a tremendous interest in Marxist-Leninist literature, precisely because of the crisis, and we must encourage still further the distribution of this type of literature. A good example, of course, is Stalin's book of 128 pages, 100,000 (39) published to retail at 10c. About 80,000 have been distributed already. This sort of literature is wanted more and more, but agitational literature is still our main task. In connection with our theoretical literature, we must remember that we have to be constantly on guard against any and all attempts to bring alien ideology into our movement. Our literature is a great weapon against this. All sorts of would-be Marxist literature is being published by bourgeois publishers and the renegades. Our job is to fight it with our own theory which must be kept clear and undefiled.

I conclude, that this evidence sustains the Government's contention that the Communist Party writes, circulates, distributes, prints, publishes, displays, and causes to be written circulated, distributed, printed, published, and displayed and has in its possession for those purposes written or printed matter advising and teaching the overthrow by force and violence of the Government of the United States, and that the Communist Party of the United States therefore comes within the purview of the statute under which the alien's deportation is sought.

Exhibit "E"—(Continued.)

E. STRATEGY AND TACTICS EMPLOYED BY THE COMMUNIST PARTY TO ACCOMPLISH ITS OBJECTIVES

In the preceding subdivisions of this memorandum, I have pointed out briefly the aims and objectives of the Communist Party, its advocacy of force and violence and its publication and distribution of literature advocating its doctrines. (40)

My findings in relation to those matters are sufficient without further comment, to conclude that the Communist Party of the United States comes within the purview of the statute with which we are here concerned. In view of the rules of the Department requiring me to give a summary of the evidence in the hearing, I summarize the proof relating to the strategy and tactics employed by the Communist Party to carry out its objectives in the United States.

The strategy of the Communist Party to accomplish its final aims in the United States has been formulated around the more immediate objective of gaining control over the masses, schooling them to the necessity for a violent revolution, and training them in revolutionary tactics. In furthering this objective, the Communist Party conceives itself and its members as the vanguard of the working classes, directing them, as the most important section of the masses, into a revolutionary state of mind, which will be ultimately utilized in effecting the proletarian revolution and the dictatorship of

Exhibit "E"—(Continued.)

the proletariat. A few excerpts from the Party literature illustrate this immediate aim.

The task of our Party today, the tasks of this convention have been clearly and systematically set forth in the documents before us for adoption, especially the Theses and Decisions of the 13th Plenum of the Executive Committee of the Communist International. * * * My report has been for the purpose of further elaborating these fundamental directives and discussing some of our central problems concretely in the light of these directives. All these tasks set (41) forth in the documents before us are particular parts of the one general task * * * of winning the majority of the toiling masses for the revolutionary struggle for their immediate political and economic needs as the first steps along the road to proletarian revolution, to the overthrow of capitalist rule, the establishment of a revolutionary worker's government, a Soviet government, and the building of a Socialist society in the United States.⁶⁸

The doctrine of the class struggle, as applied by Marx to the question of the State and of the Socialist revolution, leads inevitably to the recognition of the political rule of the proletariat, of its dictatorship, i. e., of a power shared with none and relying directly upon the armed force of the masses. The overthrow of the bourgeoisie is realizable by the transforma-

(68) Gov. Ex. 136, p. 102.

Exhibit "E"—(Continued.)

tion of the proletariat into the ruling class, able to crush the inevitable and desperate resistance of the bourgeoisie, and to organize, for the new economic order, all the toiling and exploited masses.⁶⁹

It follows that for revolution it is essential first that a majority of the workers (or at least a majority of the class-conscious, thinking, politically active workers) should fully understand the necessity for revolution and be ready to sacrifice their lives for it; secondly, that the ruling classes be in a state of governmental crisis which draws even the most backward masses into politics * * * weakens the government and makes it possible for the revolutionaries to overthrow it rapidly.⁷⁰ (42)

(1) The Party as the Vanguard of the Working Class.

The Party must first of all constitute the vanguard of the working class. The Party must absorb all the best elements of the working class, their experience, their revolutionary spirit and their unbounded devotion to the cause of the proletariat. But in order that it may really be the vanguard, the Party must be armed with a revolutionary theory, with a knowledge of the laws of the movement, with a knowledge of the laws of revolution * * *

(69) Gov. Ex. 182, p. 23.

(70) Gov. Ex. 183, pp. 43-44.

Exhibit "E"—(Continued.)

Only a party which adopts the point of view of the vanguard of the proletariat, which is capable of raising the masses to the level of the class interests of the proletariat, is capable of diverting the working class from the path of craft unionism and converting it into an independent political force. The Party is the political leader of the working class.

* * * Every army at war must have an experienced General Staff if it is to avoid certain defeat. All the more reason therefore why the proletariat must have such a General Staff if it is to prevent itself from being routed by its mortal enemies. But where is this General Staff? Only the revolutionary party of the proletariat can serve as this General Staff. A working class without a revolutionary party is like an army without a General Staff. The Party is the Military Staff of the Proletariat.⁷¹

The international imperialist bourgeoisie has killed off ten million men and maimed twenty million in "its" war, the war to decide whether (43) the English or the German robbers are to rule the world.

If our war, the war of oppressed and exploited against oppressors and exploiters, results in half a million or a million victims in all countries, the bourgeoisie will say that the sacrifice of the former is justified, while the latter is criminal.

(71) Gov. Ex. 183, pp. 107-109.

Exhibit "E"—(Continued.)

The proletariat will say something altogether different.

Now, amid the ravages of the imperialist war, the proletariat is thoroughly mastering that great truth taught by all revolutions and left as a heritage to the workers by their best teachers, the founders of modern Socialism. That truth is, that there can be no successful revolution without crushing the resistance of the exploiters. It was our duty to crush the resistance of exploiters when we, the workers and toiling peasants, seized state power. We are proud that we have been doing it and are continuing to do it. We only regret that we are not doing it in a sufficiently firm and determined manner.⁷²

The successful struggle of the Communist International for the dictatorship of the proletariat presupposes the existence in every country of a compact Communist Party, hardened in the struggle, disciplined, centralized, and closely linked up with the masses.

The Party is the vanguard of the working class, and consists of the best, most class-conscious, most active and most courageous members. It incorporates the whole body of experience of the proletarian struggle * * *

It is a revolutionary organization, bound by iron discipline and strict revolutionary rules

Exhibit "E"—(Continued.)

of (44) democratic centralism, which can be carried out owing to the class-consciousness of the proletarian vanguard, to its loyalty to the revolution. * * *73

The dictatorship of the proletariat is a persistent struggle, Lenin says further, "sanguinary and bloodless, violent and peaceful, military and economic, educational and administrative"—against the forces and traditions of the old society. The force of habit of millions and of tens of millions is a terrible force. Without an iron party steeled in the struggle, without a party enjoying the confidence of all who are honest in the given class, without a party capable of keeping track of and influencing the mood of the masses, it is impossible to conduct such a struggle successfully.⁷⁴

It must be emphasized that capitalism will not simply come to an end; it can only be ended by the organized actions of the working class in collaboration with its allies from other sections of the population.

The revolution does not simply happen; it must be made. This does not imply that the Communist Party "makes" the revolution. The socialist revolution is carried out by the great masses of toilers. The Communist Party, as the vanguard of the most conscious toilers, acts as their organizer and guide. It gives the masses

(73) Gov. Ex. 185, pp. 62-63.

(74) Gov. Ex. 186, p. 42.

Exhibit "E"—(Continued.)

political awareness of their problems, a realistic program that will solve these problems; the heightened class consciousness of the workers leads them to follow the Communist Party.⁷⁵ (45)

F. PROGRAM OF THE COMMUNIST PARTY WITH REGARD TO THE LABOR MOVEMENT

As indicated in the above excerpts, the chief emphasis in the strategy for obtaining control over the masses is to enlist the support of the workers, since they constitute a large section of the proletariat. It is of primary importance that they should be captured as sympathizers, affiliates or members in the Communist scheme. To this end, the Party had adopted an opportunistic program for the purpose of insinuating itself into the ranks of organized labor as well as the unorganized group of workers. In general, the device employed is to play upon the needs, dissatisfactions and sympathies of the working masses, by fostering demands, encouraging strikes, mass demonstrations and other forms of political and physical expression.⁷⁶ The following excerpts from Communist literature illustrate this principle:

(75) Gov. Ex. 231, p. 125.

(76) In addition to the excerpts the following references in Government Exhibits illustrate the program; Gov. Ex. 19, p. 3; Gov. Ex. 60; Gov. Ex. 73; Gov. Ex. 74; Gov. Ex. 26, p. 1; Gov. Ex. 56, p. 1; Gov. Ex. 20, pp. 4-5.

Exhibit "E"—(Continued.)

In (It) is necessary to be able to withstand all this, to go the whole length of any sacrifice, if need be, to resort to strategy and adroitness, illegal proceedings, reticence and subterfuge, to anything in order to penetrate into the Trade Unions, remain in them, and carry on Communist work inside them, at any cost.⁷⁷

The art of warfare under modern conditions consists in mastering all forms of fighting and all the achievements of science in this sphere, (46) utilizing them intelligently, combining them intelligently, or making timely use of one or another of these forms as the circumstances of the situation require.

The same applies to the forms of struggle in the political sphere. The forms of struggle in the political sphere are even more varied than the forms of warfare. They change with the development of economic life, social life, and culture, with the condition of classes, the relation of the contending forces, the nature of government and, finally, with international relations. The illegal form of struggle under absolutism, combined with partial strikes and workers' demonstrations; the open form of struggle, when "legal opportunities" existed and mass political strikes of the workers; the parliamentary form of struggle at the time, say, of the Duma and extra-parliamentary demonstrations of the masses at times assuming the

(77) Gov. Ex. 105, p. 50.

Exhibit "E"—(Continued.)

character of armed insurrections; lastly, state forms of struggle, when the proletariat had taken power and is able to utilize all the means and forces of the state, including the army—such in general are the forms of struggle which were developed in the practice of the revolutionary struggle of the proletariat. It is the duty of the Party to master these forms of struggle, to combine them intelligently on the field of combat, and skillfully to direct the struggle into such forms as are particularly expedient in the given situation.

The forms of organization of armies and the kinds of troops are usually adapted to the forms and methods of conducting warfare. The former change with the latter. In a war of maneuvers the issue is frequently decided by massed (47) cavalry. In trench warfare, on the other hand, the cavalry plays either no part at all, or a subordinate part; artillery and aviation, gas and tanks, then decide everything.

The aim of the art of warfare is to utilize all the various kinds of troops, to perfect them and to skillfully combine their operations.

The same is true of the forms or organization in the political sphere. Here, as in the military sphere, the forms of organization are adapted to the forms of struggle. Secret organizations of professional revolutionaries in the era of absolutism; educational, trade union, cooperative and parliamentary organizations

Exhibit "E"—(Continued.)

(the fractions in the Duma, etc.) in the era of the Duma; factory and workshop committees, peasant committees, strike committees, Soviets of workers' and soldiers' deputies, revolutionary military committees, and a large proletarian party uniting all these forms of organization, during the period of mass action and insurrection; finally, the state form of organization of the proletariat when the power of government becomes concentrated in the hands of the working class — such in general are the forms of organization which, under varying conditions, the proletariat can and must utilize in its struggle against the bourgeoisie.

It is the duty of the Party to master all these forms of organization, perfect them and skillfully combine their work at each particular moment.⁷⁸

In order that it may fulfill its historic mission of achieving the dictatorship of the proletariat, the Communist Party must first of all set itself (48) to accomplish the following fundamental strategic aims:

Extend its influence over the majority of the members of its own class, including working women and the working youth. To achieve this the Communist Party must secure predominant influence in the broad mass proletarian organizations (Soviets, trade unions, factory councils, cooperative societies, sport organiza-

(78) Gov. Ex. 185, pp. 31-32.

Exhibit "E"—(Continued.)

tions, cultural organizations etc.). It is particularly important for the purpose of winning over the majority of the proletariat, to capture the trade unions, which are genuine mass working-class organizations closely bound up with the everyday struggles of the working class. To work in reactionary trade unions and skillfully to capture them, to win the confidence of the broad masses of the industrially organized workers, to relieve and remove from their posts the reformists leaders, represent important tasks in the preparatory period.⁷⁹

When the revolutionary tide is not rising, the Communist Parties must advance partial slogans and demands that correspond to the everyday needs of the toilers, and combine them with the fundamental tasks of the Communist International. * * * United front tactics also occupy an important place in the tactics of the Communist Parties throughout the whole pre-revolutionary period as a means towards achieving success in the struggle against capital, towards the class mobilization of the masses, and the exposure and isolation of the reformist leaders. (49)

The correct application of united front tactics and the fulfillment of the general task of winning over the masses pre-suppose in their turn systematic and persistent work in the trade unions and other mass proletarian or-

(79) Gov. Ex. 185, pp. 62-63.

Exhibit "E"—(Continued.)

ganizations. It is the bounden duty of every Communist to belong to a trade union, even a most reactionary one, provided it is a mass organization.⁸⁰

(4) A persistent and systematic propaganda and agitation is necessary in the army, where Communist groups should be formed in every military organization. Whenever, owing to repressive legislation, agitation becomes impossible, it is necessary to carry on such agitation illegally. But refusal to carry on or participate in such work should be considered equal to treason to the revolutionary cause, and incompatible with affiliation with the Third International.⁸¹

The elementary means of the struggle of the proletariat against the rule of the bourgeoisie is, first of all, the method of mass demonstrations. Such mass demonstrations are prepared and carried out by the organized masses of the proletariat, under the direction of a united, disciplined, centralized Communist Party. Civil war is war. In this war the proletariat must have its efficient political officers, its good political general staff, to conduct operations during all the stages of that fight.

The mass struggle means a whole system of developing demonstrations growing ever more acute in form, and logically leading to an up-

(80) Gov. Ex. 185, pp. 67-68.

(81) Gov. Ex. 94, p. 28.

Exhibit "E"—(Continued.)

ris- (50) ing against the capitalist order of government. In this warfare of the masses developing into a civil war, the guiding party of the proletariat must, as a general rule, secure every and all lawful positions, making them its auxiliaries in the revolutionary work, and subordinating such positions to the plans of the general campaign, that of the mass struggle.⁸²

The revolutionary will accept a reform in order to use it as a means wherewith to link legal work with illegal work, in order to use it as a screen behind which his illegal activities for the revolutionary preparation of the masses for the overthrow of the bourgeoisie may be intensified.⁸³

While the Communist Party of the USA does not openly state this as a purpose on all occasions or is not ostensibly engaged in this particular task at all times this is the stated reason for building mass Communist Party for fighting for better conditions such as shorter hours, higher wages, more relief to the unemployed, and all of the other demands raised in the various struggles organized by or under the leadership of the Communist Party. These demands are what are termed temporary demands or aims, and they are brought forward solely for the purpose of increasing the mem-

(82) Gov. Ex. 94, p. 47.

(83) Gov. Ex. 183, p. 103.

Exhibit "E"—(Continued.)

bership of the Communist Party and establishing the Communist Party as the leader of the working class and its allies. * * * While the Communist Party does not hesitate to use the ballot in order to get before the electorate of the country in order to bring forward its program and its temporary (51) demands, this is regarded as only a make-shift at the best, and further is only another means of building the influence and membership of the Communist Party.⁸⁴

The Trade Union Educational League

The program outlined above found its expression in the American Labor Movement through the organization, about 1921, of the Trade Union Educational League (T.U.E.L.).⁸⁵ The program of this organization was one of infiltration of Communist Party members into the so-called reactionary A. F. of L. Unions, and "boring from within." This was accomplished by organizing a nucleus of Communist Party members within a particular union, called a "fraction," which worked secretly, organizing opposition or left-wing movements, pursuant to a program formulated by the Communist Party.⁸⁶ The object of this policy was eventually to wrest control of the A. F. of L. Unions from their "reactionary leaders," in order to prepare them for

(84) Tr. pp. 1273-74.

(85) Tr. pp. 72-77; Gov. Ex. 135, p. 164.

(86) Tr. pp. 72-77; Gov. Ex. 135, p. 164-65.

Exhibit "E"—(Continued.)

the role invisioned for them in the ultimate "revolution."⁸⁷ The T. U. E. L. was a so-called "front organization" whose true purpose of advancing the aims of Communism was screened by the ostensible legitimate purpose of educating its members in the principles of labor organization.⁸⁸ The T. U. E. L. was the American affiliate of the R. I. L. U., which in turn (52) was the Trade Union Bureau of the Comintern.⁸⁹ In connection with the functions of the T. U. E. L., and the trade union policies and tactics of the Communist Party during this period, and the place of this program in the entire Communist scheme, a letter from the Comintern and Profintern received by Gitlow from the Secretary of the American Section in July 1925, outlining the program of the American Party is quoted in full.⁹⁰

Dear Comrades: It is of extreme importance to the life and growth of the Workers Party that its members as a whole realize better the necessity of more intensive work in the labor unions. The labor unions are the basic mass organizations of the workers. They wage war against the employers as one of the most important sectors of the front of the class strug-

(87) Tr. pp. 78-79; 444.

(88) Tr. p. 444; Tr. pp. 72-77, 150, 161; Tr. pp. 368-72; Gov. Ex. 120, p. 69.

(89) Tr. p. 137.

(90) This letter is also reproduced in full in the record, pages 208-13 of the transcript.

Exhibit "E"—(Continued.)

gle. The capture of the leadership of the labor union masses in their struggle is vitally necessary not only for the strengthening of the Workers Party at the present time, but also for the ultimate victory of the revolutionary struggle. The capture of the labor unions is our first and foremost task.

That the Workers Party as a whole does not yet thoroly realize the exceptional importance of trade union activity is clear from the fact that only 40% of the Party membership are members of labor unions, and even if (of) those only very few are active in the latter work. If the unions are weak and are dominated by the reactionaries, it is the business of the Communists to strengthen them and to wage a relentless fight against the (53) leadership and the policies of the reactionaries. In those places and industries where no labor unions exists the Communists must take the initiative and organize unions. We must not sit with our hands folded and wait until the labor bureaucracy finds it necessary to form unions. The organization of the masses into labor unions is the historical task of the Communist movement in America.

The Party must use disciplinary measures to compel its members to join the labor unions and become active in them. It must be firmly fixed in the mind of every Party member that no worker in an industrial country like America

Exhibit "E"—(Continued.)

can be a real Communist unless he is an active labor unionist. The Party must take a determined stand against any sign of slackness in labor union activity. The work in the labor unions must be regarded as the basis which will determine the success of the Party in most other spheres of work.

The Workers Party must render the utmost assistance to the Trade Union Educational League. Wherever the Party has branches the latter must regard it as their duty to set up and maintain local branches of the League. Party members who are trade unionists must actively engage in the work of the League. In the League as a whole and in each separate labor union organization the Party members must be united into a Communist fraction and on all questions act unanimously as one body. The League must resume publication of its central organ and extend the literature department both of which must be supported by the Party members and by the Party as a whole. The idea that (54) the League represents an organization independent of the Party must be eradicated.

The Workers Party must also do everything within its power to prevent itself becoming isolated from the masses. It must resist the tendencies to reduce the Trade Union Educational League to the position of an exclusive organ of the Communists and their closest sympa-

Exhibit "E"—(Continued.)

thizers, irrespective of whether such tendencies are a result of pressure from outside or of pressure on the part of the Party members anxious to keep out nonpartisans. The Party must strive to convert the League into an extensive Left Bloc Organization lining up all the revolutionary and progressive elements in the labor unions against the reactionary bureaucracy.

The Communist strategy in the labor unions must be to unite, thru the medium of the Trade Union Educational League, all the left wing elements against the old officialdom and their policies. Every struggle of the workers and all everyday activities must be directed to this object. One of the important features of the work in the labor unions is without fail to utilize the elections of trade union officers and of the delegates to the local district, national and A. F. of L. conventions. Among the so-called progressive elements there is a growing tendency to develop an opposition against the reactionary labor union bureaucracy and to put up their own ticket in opposition to them at elections. This tendency must be stimulated and developed by the Workers Party as a means of bringing the workers under its influence. In every election, both in local unions, central Trades Councils and in the international union, the Communists, where (55) they are not sufficiently strong to secure the elec-

Exhibit "E"—(Continued:)

tion of their own candidates, must unite with the progressives and support joint candidates on the basis of the united front. It should be remembered that the officialdom of the American Federation of Labor and of the international unions does not represent a single reactionary mass. The closer the labor union official is to the shop and the dues-payer, the more subject he is to the direct influence of the masses of the workers. Among these elements there are many who are disgusted with the policies of the heads. This discontent, tho not yet organized, nevertheless represents opposition to the old course. The Party must give every possible assistance to the progressive elements in their struggle against the reactionary bureaucracy. The League must strive to establish a united front with these elements on the basis of a concrete program of action.

The League should be actively supported by the Party in the prosecution of the League program endorsed at the Third Congress of the R. I. L. U. Particular attention should be given to the following points.

1. Strikes and Wage Movements.

The Party must actively engage in every strike and wage movement. It must also arouse the masses to take up such movements. It must skillfully utilize these movements for political ends. It must have a program of de-

Exhibit "E"—(Continued.)

mands for each mass movement of this kind and the Communists must fight for the leadership in the struggle. The wage-cutting campaign carried out by the capitalists must be opposed by a countercampaign of strikes. (56)

2. Class Collaboration.

The Party must conduct a relentless war against all class collaboration plans, such as the Labor Banks, Insurance Companies, the B. & O. Plan, etc., which are being foisted upon the workers by the reactionary bureaucracy. This campaign must be opposed by a militant struggle for a class-war policy. The Party must steadily expose the incapability, corruption, and treachery of the reactionary bureaucracy.

On the question of Labor banking, our policy must be to oppose the establishment of new banks on the present basis and to demand that the existing banks be reorganized on cooperative lines, that they break with Wall Street and refrain from locking up strike funds in various investments.

3. Organization of the Unorganized.

In every labor union the Party must raise the question of the organization of the unorganized. The Party should also utilize its shop nuclei for the organization of the organized and to obtain the leadership in all their struggle. Where labor unions exist the policy of the Party must be to strengthen them. Where

Exhibit "E"—(Continued.)

there are no labor unions the Party must take the initiative and form unions.⁹¹

The T. U. E. L. as an affiliate of the R. I. L. U., was subordinate to the Comintern, the R. I. L. U., and their committees, and also to the C. E. C. of the American Party. In this connection, it is noted that a constitution and program for the T. U. E. L. were considered by the Polcom as evidenced by the minutes of Nov. 2, (57) 1927.⁹² The minutes of the top committees of the Party contain numerous instances of direct instructions to be carried out by the T. U. E. L., even in detailed matters.⁹³

The Trade Union Unity League

The policy which gave rise to practice of infiltration into the established Labor Unions and "bor-ing from with" had two immediate aims: (1) To organize a left-wing opposition within the A. F. of L. Unions, and, (2) To evolve a new central organization by merging these left-wing groups with similar blocs within the large number of independent unions existing at that time,⁹⁴ but, about 1929, the strategy which led to the development of the T. U. E. L. began to undergo a change, upon direc-

(91) Tr. pp. 208-213.

(92) Gov. Ex. 32; see also transcript, pp. 139-40.

(93) Gov. Ex. 10, p. 7; Gov. Ex. 13, p. 3; Gov. Ex. 20, pp. 5-6; Gov. Ex. 21, pp. 1-3; Gov. Ex. 26, p. 2; Gov. Ex. 27, p. 3; Gov. Ex. 31, p. 2; Gov. Ex. 36, pp. 1-4; Gov. Ex. 41.

(94) Tr. p. 171; Gov. Ex. 66.

Exhibit "E"—(Continued.)

tions from the Comintern and the R. I. L. U. The new policy was expressed in the transformation of the T. U. E. L. at a Convention in August 1929 into the Trade Union Unity League (T. U. U. L.), which began a program of organizing and chartering its own revolutionary unions, controlled directly by the Communist Party⁹⁵ These unions were of the industrial type, as distinguished from the craft unions of the A. F. of L.⁹⁶ The T. U. U. L. policy, however, did not entirely supplant the former "boring from within" tactic in the (58) already established Unions, but rather was designed to complement that strategy, since the T. U. U. L. emphasized the organization into unions of previously unorganized workers.⁹⁷ The official publication of the T. U. U. L. was "Labor Unity" of which the Government witness Nat Honig was for a time editor.⁹⁸

The T. U. U. L., like its predecessor, the T. U. E. L., was affiliated with the R. I. L. U. and was dominated by the Communist Party and its governing committees.⁹⁹ Its National Committee was composed chiefly, if not entirely, of members of the

(95) Tr. pp. 234-236; Gov. Ex. 164, pp. 809; Gov. Ex. 220, p. 26; Gov. Ex. 129, p. 32; Tr. pp. 486-487; See also Gov. Ex. 66.

(96) Tr. pp. 72-73.

(97) Gov. Ex. 221, pp. 6-7; Gov. Ex. 135, p. 218.

(98) Gov. Ex. 135, p. 218.

(99) Tr. pp. 443-48; Gov. Ex. 220, p. 31; Gov. Ex. 164, p. 810, 799.

Exhibit "E"—(Continued.)

Communist Party,¹ and it openly supported the program of the Communist Party.² The T. U. U. L. became the central organization of a group of revolutionary unions which it chartered.³

The Marine Workers Industrial Union

One of the unions chartered by the T. U. U. L. was the Marine Workers Industrial Union (M. W. I. U.), which is treated separately because it is specifically alleged that the alien was a member of, or affiliated with it, particularly during the years 1932, 1933 and 1934. This union was formed in 1930 and included both seamen and longshoremen in its membership, contrary to the craft type of organization of the A. F. of L.⁴ It was liquidated in 1935.⁵ (59)

It is the alien's contention that membership in or affiliation with the T. U. U. L. through its subsidiary, the M. W. I. U., is not grounds for deportation under the statutes controlling this proceeding. This claim is grounded upon an advisory ruling dated January 3, 1934,⁶ by Daniel W. MacCormack, then Commissioner of Immigration & Naturalization, approved by the Assistant Secretary of Labor.

(1) Gov. Ex. 135, p. 218.

(2) Gov. Ex. 135, p. 220, 170; Gov. Ex. 221, p. 13.

(3) Gov. Ex. 221; Gov. Ex. 135.

(4) Gov. Ex. 221, p. 8; Tr. p. 1920.

(5) Gov. Ex. 164, p. 812; Tr. 1920, 5886.

(6) This ruling was not admitted in evidence, but is in the record as alien's exhibit 15 for identification.

Exhibit "E"—(Continued.)

to the effect that membership in the T. U. U. L. and M. W. I. U. should not be used as the sole ground for an alien's deportation. The alien further asserts that since Jan. 3, 1934, no alien has been deported for membership in the T. U. U. L. or the M. W. I. U. It is claimed that the Commissioner's ruling was based upon information in the files of the Department of Labor, that the T. U. U. L. had disassociated itself from the R. I. L. U., as evidenced by a letter dated Dec 19, 1934, written by Commissioner MacCormack to the Chief of Police at Phoenix, Ariz.⁷ This letter contains a statement that the Department had sworn statements in its files to the effect that at a meeting of the T. U. U. L. on July 1, 1933, a resolution had been adopted severing connection with the R. I. L. U. It further states that testimony to the same effect was given by Nat Honig, editor of "Labor Unity" in the case of Chatham Shoe Co. v. Shoe Workers Industrial Union, at a trial before Justice Edward J. McGoldrich on Oct. 6, 1933. (60)

In the present proceeding, the witness Nat Honig stated that he had testified in the Chatham Shoe case but that his testimony there was not that a disassociation had occurred but that the T. U. U. L. had, sometime in 1933, ceased to acknowledge its affiliation with the R. I. L. U. Honig's testimony in this respect is borne out by the pamphlet "The

(7) A copy of this letter appears in the record as alien's exhibit 25 for identification.

Exhibit "E"—(Continued.)

Trade Union Unity League Today,"⁸ and official publication of the T. U. U. L., of which he was the author. This pamphlet was published in 1934 and makes no mention of affiliation with the R. I. L. U., but it enunciates substantially the same program as the earlier publication, the "Trade Union Unity League, Its Program, Structure, Methods, and History,"⁹ in which the affiliation of the T. U. U. L. with the R. I. L. U. was openly announced.

I excluded from evidence the advisory ruling and the letter, but in considering this matter, I have treated these documents in the same manner as if they were actually in evidence. The advisory ruling was simply a factual determination for the guidance of administrative officials and has no binding effect in this proceeding.¹⁰ The letter contains only hearsay of the weakest variety and has no other substantiation.¹¹

My conclusions with regard to the M. W. I. U. are— (61)

1. That it was chartered by and was a subsidiary of the T. U. U. L., an affiliate of the R. I. L. U. and of the Comintern, and that affiliation with or

(8) Gov. Ex. 221.

• (9) Gov. Ex. 220. .

(10) See page 10, ante.

(11) A request was addressed to L. B. Schofield, head of the Immigration and Naturalization Service that he examine the files of his bureau for the documents or reports referred to in the letter. (Al. Ex. 25.) He reported that a search revealed no records relating to this matter. Tr. 4800-4808.

Exhibit "E"—(Continued.)

membership in the M. W. I. U. is grounds for deportation of an alien within the purview of the statute.

2. That the T. U. U. L. did not, in fact, disassociate itself from the R. I. L. U. although there was probably a change in policy in about July 1933, under which the T. U. U. L. ceased acknowledging such association.¹²

3. An examination of the doctrines of the M. W. I. U., disclosed by the preamble in its membership book,¹³ convinces me that irrespective of the affiliation or lack of affiliation, that organization comes within the purview of the statute, warranting the deportation of an alien affiliated with it.¹⁴

(12) This conclusion is further suggested by the fact that William Z. Foster, Secretary of the T. U. E. L. and its successor the T. U. U. L., and an authority of the Communist Party on trade-union matters, in his book, "From Bryan to Stalin," (Gov. Ex. 135), narrates the history of the T. U. E. L., its affiliation with the R. I. L. U., its subsequent reorganization into the T. U. U. L. and its dissolution in 1935, without suggesting that there was ever a change in the status of the T. U. U. L. with regard to the R. I. L. U. The witness Schnerring also testified that the T. U. U. L. was affiliated with the R. I. L. U. through the year 1935. It is noted that Earl Browder states that there was a cancellation of the association of the T. U. U. L. with the R. I. L. U., but he places it in the year 1934, Gov. Ex. 164, p. 799. See also Gov. Ex. 191, pp. 1, 5.

(13) Gov. Ex. 276 for identification.

(14) The alien himself evidently recognized the character of this organization since he testified in

Exhibit "E"—(Continued.).

4. If the alien was affiliated with the M. W. I. U. as early as 1932, as contended by the Government, or in (62) fact at any time before July 1933, disassociation of the T. U. U. L. from the R. I. L. U. at a later period would be immaterial.

Fractions

Reference has already been made to "Fractions" which were employed as a part of the policy of infiltration into the established labor unions and "boring from within." This device was used because the established labor unions were often hostile to Communists,¹⁵ and it was, therefore, necessary to employ camouflage and subterfuge. Fractions were described by the witness Gitlow as secret cells within the trade unions,¹⁶ composed of the Communist members of the union, which because of their unity of action and militancy were able to elect their candidates for office, direct the policies of the union, and exert an influence disproportionate to the size of the fraction.¹⁷ These "Fractions" by exploiting the grievances of the workers were able to foment dissension and draw to themselves the disgruntled

the 1939 hearing that he was aware that the goal stated by the M. W. I. U. was the establishment of a "Revolutionary Workers Government."

(15) Gov. Ex. 135, p. 183. For example, see Gov. Ex. 15 for a motion passed by the Polcom on April 19, 1926.

(16) Tr., pp. 71-76.

(17) Tr., pp. 72-75.

Exhibit "E"—(Continued.)

elements.¹⁸ Under the banner of progressivism, left wingism and other ostensibly legitimate programs, these Communist nuclei were able to enlist the support of many Non-Communists who were perhaps unaware that they were thereby furthering the cause of Communism. (63)

This strategy is illustrated by the following excerpts from Party literature, and the references in the footnote to other documentary and oral evidence.¹⁹

Every party desirous of belonging to the Communist International should be bound to carry on systematic and persistent Communist work in the labor unions, cooperatives, and other labor organizations of the masses. It is necessary to form Communist groups within the organizations, which by persistent and lasting work should win over labor unions to Communism. * * * These Communist groups should be completely subordinated to the party in general.²⁰

* * * It is the bounden duty of every Communist to belong to a trade union, even a most reactionary one, provided it is a mass organization. Only by constant and persistent work in the trade unions and in the factories for

(18) Tr., pp. 72-75; 250-252.

(19) See also Gov. Ex. 135, pp. 260-61; p. 264; Gov. Ex. 148, p. 1175; Gov. Ex. 156, pp. 47-48; Tr. pp. 72-79; Tr., pp. 207-213; Tr. pp. 385-388.

(20) Gov. Ex. 94, p. 29.

Exhibit "E"—(Continued.)

the steadfast and energetic defense of the interests of the workers. * * * will it be possible to win the leadership in the workers' struggle and to win the industrially organized workers over to the side of the Party.²¹

* * * In (21) is necessary * * * to go the whole length of any sacrifice, if need be, to resort to strategy and adroitness, illegal proceedings, reticence and subterfuge, to anything in order to penetrate into the Trade Unions, remain in them, and carry on Communist work inside them, at any cost.²² (64)

In their activities within all other organizations, the members of the Communist Party always follow a united policy, which they work out through Party fractions, composed of all Party members in a given organization. Thus the members of the Party never cancel one another's work by conflicting policies, but rather develop the fullest possible power behind the single policy.²³

* * * The Communists belonging to any organization form a special fraction which discusses the problems of its organization and proposes a line of action for its members. This enables the Communists * * * to follow the same line. The Party fraction advocates mili-

(21) Gov. Ex. 95, p. 82.

(22) Gov. Ex. 105, p. 50.

(23) Gov. Ex. 116, pp. 20-21.

Exhibit "E"—(Continued.)

tancy and strives to transform the whole organization into a real fighting unit.²⁴

A. The policy of the Communist Party towards trade unions is the following:

"The Communist Party seeks to gain as much control of the trade unions as it possibly can. In order to influence the trade union members the Communist Party adopts programs and issues slogans, and takes up demands in the trade unions; building up official organizations, progressive groups, and manipulates these groups with one purpose in mind: To gain a dominant influence over the trade union membership so they can direct these members in any activities that they want to. And, ultimately, of course, if they control the trade unions, they control the economic lives of the country and if a revolutionary situation should develop they can use the (65) trade unions very effectively to bring about a successful culmination of such revolution.²⁵

Q. Now, you have mentioned a "Fraction." What is a Fraction—what do you mean by a "Fraction"?

A. A Fraction in Communist terminology means, let us say, in the Carpenters' Union we have 20 members of the Carpenters' Union, or Communist Party members. These 20 mem-

(24) Gov. Ex. 120, p. 69.

(25) Tr. p. 72.

Exhibit "E"—(Continued.)

bers are organized into a Fraction of the Carpenters' Union to carry out the orders of the Party in the Carpenters' Union. It is a cell organization within the larger body which seeks to attract the non-Communist cells to it so that the Communist Party eventually will control the organization.²⁶

Front Organizations

Another device employed in carrying out the policy of winning the confidence of the masses and gaining control over them was the use of so-called "Front Organizations." These presented to the public an innocuous or legitimate objective by espousing causes which would attract certain elements of the masses, but in actuality they were designed and controlled by the Communist Party for the purpose of gaining the confidence and sympathy of various elements of the masses and, perhaps, ultimately to recruit them into the ranks of the Party. Control of these organizations by the Communist Party was insured by its "Fractions" within them,²⁷ and by keeping its members or sympathizers in key positions. The general scheme is described by the witness Gitlow, in connection with the T. U. E. L., which has already been alluded to:

A. Not exactly. The Trade Union Educational League is a front organization of the Communist Party. It may be formed—

(26) Tr. p. 75.

(27) Gov. Ex. 39, p. 2.

Exhibit "E"—(Continued.)

Front organizations may be formed for a short period of time, or they may be formed for an extended period of time, depending on the circumstances, and the front organizations are used by the Communist Party for the express purpose of reaching non-Communists who cannot be reached directly through the Communist Party, you see.

Q. And would you say that they are formed only for the purpose of furthering the cause of the Communist Party?

A. Their actual purpose is for furthering the cause of the Communist Party, but that is not—that is never given as the public purpose of the organization.

Q. But it is, however, the real purpose of the organization?

A. It is, however, intrinsic (intrinsically), the real purpose of the organization.

Q. And it is only one of the means used to promote a situation so that the revolution may be brought about at the proper time?

A. All this is preparatory work to the time when the Communists believe they can seize power through revolution.²⁸

The witness Schnering, too, gave a general description of the methods and purposes of "Front Organiza- (67) tions in describing the work of the Communist Party among the unemployed:

(28) Tr. pp. 78-79.

Exhibit "E"—(Continued.)

Q. I see. Now, can you give us any idea of any other group or class of people that the Communist Party endeavored to bring into its fold, and the methods used?

A. Yes, the petty bourgeois intellectuals.

Q. What is that?

A. The petty bourgeois intellectuals.

Q. What class would you say they belonged to? Would that be relief workers?

A. Oh, it might be certain categories of relief workers. It might be—

Q. (Interposing.) Well, did they attempt to organize the relief workers?

A. Oh, yes, we attempted to organize the relief workers with the Unemployed Councils, and on March 6, 1930, in most parts of the country, large demonstrations were held to protest against starvation, demand more and better relief, and the payment of unemployment insurance on the basis of full wages, and not one cent less than that, as the party put it.

Q. Now, were there any organizations established for that purpose among the relief workers that you know of?

A. Well, the Unemployment Councils began their activities before the days of the Public Works Programs, there was no Public Works Program back in 1930. So it was a proposition to organize workers into the Unemployment Councils in order that they might struggle for better relief. Then, by the time

Exhibit "E"—(Continued.)

the WPA came along the Unemployment Councils had liquidated because, at that point, the party had taken control (68) of the Workers Alliance, and the Workers Alliance became the medium through which the party organized and made contact with unemployed workers who were either on direct relief or working on the WPA or some other relief Public Works Program.

Q. What was the aim and objective of the party in organizing relief workers?

A. To develop widespread militant mass struggles to extend the influence of the Communist Party among the unemployed, in short, to build the revolution and to use, of course, the unemployed organizations, as the party uses all organizations in which it wields influence, as a recruitment ground for the party.

Q. And what sort of propaganda was issued by the Communist Party in order to influence these relief workers, if you know?

A. You mean as regards the unemployed organizations?

Q. Yes, what sort of a line, what sort of a party line was used to influence the relief workers and gain their support in the Communist Party movement?

A. Well, the Communist Party caused the Unemployment Councils to contend that capitalism had condemned millions of the unemployed to starvation, to give them only the

Exhibit "E"—(Continued.)

most miserable existence on relief, and that it became the problem and the duty of workers to insist that if the capitalists couldn't give them a job that they still had to fit and feed them properly. To do this they had to organize themselves; they had to associate themselves in a militant class-conscious unemployed organization. And at that moment (69) the Unemployed Councils, which had been organized and were controlled by the Communist Party, was the only organization, of course, which fought for adequate relief for the unemployed.

Now, these unemployed workers were told it would never do under any circumstance for you to go to these people expecting that, on the basis of reason, you will be able to persuade them to give you decent relief. You will only get as much as you are able to wring out of them and force them to give you as a result of your militancy and your organized power.

Now, then, we would point out this condition will always exist; from now on and henceforth there will be more and more millions of workers condemned to a relief standard of living and, therefore, it will be necessary for you to continue to associate yourself and fight militantly for better relief.

And, of course, the bait that the party held forward was that it would be able, as a result of this militant struggle, to win unem-

Exhibit "E"—(Continued.)

ployment and social insurance for the unemployed, but this could only be won, it had to be understood, on the basis of the most militant kind of struggle. Now, then, we pointed out of, course, that during the process of all of the circumstances and all of these things that there was a country, however, where the workers—where there was no unemployment, excepting for those workers who were physically unable to work, or who, because of old age or other circumstances beyond their control, couldn't find a job; that country was the Soviet Union and there, of course, unemployment (70) insurance was paid and social insurance was paid and the payments—the sum of payment, was very, very liberal. And, of course, it was a very wonderful thing that the Soviet workers had acquired all these things. They had done it, however, only as a result of having exercised their revolutionary power to overthrow capitalism in Russia and displace the capitalist government with the dictatorship of the proletariat. The conclusion that the American workers ought to draw was only until they had followed in the footsteps of the Russian workers and farmers would they be able to reach a solution for the problem of the worker on relief.²⁹

The nature, purposes, and extent of the "Front

(29) Tr. pp. 450-454.

Exhibit "E"—(Continued.)

Organization" tactic is further illustrated in the evidence concerning some of the specific organizations which are treated below:

The International Labor Defense (I. L. D.)

The International Labor Defense was one of the most active and effective of the so-called "Front Organizations." It was conceived by the Communist International and is a section of the International Red Aid (I. R. A. or Mopr.), having been organized in the United States about 1926 upon instructions from the Comintern. Its immediate purpose is to assist and defend Communists who encounter legal difficulties by providing bail, lawyers, and other assistance. It was completely dominated by the governing committees of the Communist Party and got its instructions directly (71) from the Comintern and the I. R. A. through the American Central Executive Committee.³⁰

It was incumbent upon all Party members to belong to the I. L. D.³¹ However, the I. L. D., being a "Front Organization," included Non-Communists, many of whom were unaware of the purpose and control of the organization. Care was exercised, however, to insure that control should remain in the hands of its members. This is pertinently illustrated by a resolution of the Political Committee under date of June 27, 1925, selecting

(30) Tr. pp. 102-105, 157-158, 383, 417-420, 1259; Gov. Ex. 39, p. 1; Gov. Ex. 46, pp. 2-3.

(31) Tr., p. 108; Gov. Ex. 33, p. 5.

Exhibit "E"—(Continued.)

a slate of candidates for offices in the I. L. D., in which the Communist and Non-Communist members were carefully distinguished, and the offices divided between them, insuring a majority of Communists on the Executive Committee of the I. L. D., by selecting several Communists who were not disclosed as such.³² Other examples of directions issued to the I. L. D. by the C. E. C. establish its complete domination by the Communist Party and thus ultimately by the Comintern.³³

Other front organizations

The All-American Anti Imperialist League (A. A. I. L.) was another Front Organization devised by the Communist Party of the United States, upon instructions from Moscow, to present an Anti-Imperial- (72) ist and Non-Communist front. Its control and direction by the Communist Party is evidenced by the manner in which its policies and programs were directed by the governing committees of the Party.³⁴

The American Negro Labor Congress (A. N. L. C.) was ostensibly a Negro Organization, designed to improve the conditions of negro workers and to put forward a policy of self-determination for the negro population of the United States. Al-

(32) Tr., pp. 179-180.

(33) Gov. Ex. 8, p. 6; Gov. Ex. 29, p. 4; Gov. Ex. 18, p. 5; Gov. Ex. 19, p. 4; Gov. Ex. 25, p. 5; Gov. Ex. 32, p. 2; Tr. pp. 105, 107, 138, 146-148, 191-192.

(34) Gov. Ex. 35; Tr. pp. 154-155; see also Gov. Ex. 18, pp. 1-2; Gov. Ex. 36, pp. 7, 12; Gov. Ex. 60.

Exhibit "E"—(Continued.)

though the Communist Party denied that it had anything to do with this organization, it was, in fact, organized by the Communist Party of the United States upon express instructions from the Comintern and its policies were predetermined by the Polcom of the American Party.³⁵ Its ultimate purpose, like that of other "Front Organizations" was to enlist this element of the population for the ultimate Communist aim of revolutionary overthrow of the Government.

Similarly, the American League Against War and Fascism, organized in 1933, later denominated The American League For Peace And Democracy, was identified by various witnesses as a Front Organization of the Communist Party, parading the dangers of fascism and the inevitability of imperialist wars under fascist and capitalist regimes.³⁶

Unemployed Councils, too, were promoted by the Communist Party to enlist the support of unemployed workers and to exploit their grievances so as to recruit (73) them to the Communist cause.³⁷ The Communist Party also developed an organization within the ranks of the Ex-Service Men, called the "Workers Ex-Service Men's League."³⁸

(35) Gov. Ex. 36; Tr. pp. 160-163; see also Gov. Ex. 28, pp. 4-5.

(36) Tr. pp. 365-368, 454-459, 1262, 1264-1265.

(37) Tr. pp. 450-454, 360-361, 401-402, 1263-1266; Gov. Ex. 164, p. 799; Gov. Ex. 28, p. 1.

(38) Tr. pp. 403, 1259-1263.

Exhibit "E"—(Continued.)

Other organizations identified as Front Organizations of the Communist Party. were "The Friends of the Soviet Union,"³⁹ "American Youth Congress,"⁴⁰ "National Students' League,"⁴¹ and "The American Students' Union,"⁴² "The American Peace Mobilization,"⁴³ "The Committee for the Foreign Born."⁴⁴

Communist Party Schools

Another phase of the teaching and propaganda activity of the Communist Party was its schools, called "Workers Schools," which were established in various cities of the United States, the principal one being in New York City.⁴⁵ Control was exercised over them by the C. E. C. through its agitation and propaganda department (Agit-prop).⁴⁶

These schools were a form of Front Organization, being "to all intents and purposes nonpolitical organizations, interested only in the education of the masses,"⁴⁷ but their actual purpose was "to

(39) Tr. p. 813.

(40) Tr. pp. 812, 831.

(41) Tr. pp. 459, 813.

(42) Tr. pp. 459, 813.

(43) Tr. p. 812.

(44) Tr. p. 813.

(45) Tr. pp. 93-94.

(46) Gov. Ex. 30, pp. 2-3; Gov. Ex. 51, p. 2; Tr. 136.

(47) Tr. p. 433.

Exhibit "E"—(Continued.)

educate as (74) many workers as possible to the Communist Party Line without their knowing it."⁴⁸ They were "recruiting agencies for the Communist Party."⁴⁹ The witness Schnering was at one time a director of the Milwaukee Workers School and an instructor. At its peak, seven hundred members were enrolled in this school.⁵⁰ As an example of the policy pursued in the instruction, Schnering described that in a course in American Labor History, taught by himself, the theme was that there could be no solution of American Labor problems until the American Workers should follow a course similar to the revolutionary policy, successfully pursued by the workers of Russia.⁵¹ The "line was the Communist Party line, because the Communist Party controlled the school,"⁵² and the ultimate purpose of the school was to commit the students to the Party line as one phase of the policy of gaining control over the Labor Unions in order to use them in accomplishing the ultimate objective of overthrow of the Government of the United States by force and violence.

In addition to the Workers Schools, the American Communist Party has sent many students to the Lenin School in Moscow, Russia, which was

(48) Tr. p. 434.

(49) Tr. p. 434.

(50) Tr. pp. 434, 441.

(51) Tr. pp. 437-438.

(52) Tr. p. 440.

Exhibit "E"—(Continued.)

established by the Comintern for the purpose of training professional revolutionists. Their expenses are paid by the Party while they attend this school.⁵³ (75)

The Policy of Hypocrisy and Deceit

As a practical concomitant of the practice of infiltrating into organized Labor Unions and "bor-ing from within" and the development and control of front organizations, it was necessary to employ a strategy to enable the Communists to carry on their work in these organizations, despite efforts of such groups to exclude or oust them. To meet this situation, the so-called policy of "hypocrisy and deceit" is employed. Party members are instructed not only to conceal their membership, but also to deny it when expedient. It has already been pointed out that the fractions are secret organizations, and that certain Labor Organizations have sought to exclude Communists from their ranks. The minutes of the Committees of the C. E. C. contained many specific instructions that specified members of the Party should under various circumstances deny that they are members, and that they should answer other questions in a specified manner.⁵⁴ (76)

(53) Tr. pp. 101-102; Gov. Ex. 18, p. 5; Gov. Ex. 38, p. 1.

(54) Gov. Ex. 15, p. 3; Gov. Ex. 8, p. 6; Gov. Ex. 17; Gov. Ex. 20, p. 1; Gov. Ex. 41; Tr. 99, 172-174, 179-181.

Comrades Overgaard and Johnstone reported on the attitudes of Comrades who have been advised

Exhibit "E"—(Continued.)

The witness Schnering described this policy as follows:

A. Well, you see, as far as the Communist Party is concerned, from the Marxist point of view all truth is relative. We did not hesitate to send out instruction (instructed) witnesses to court, instructed in the sense that we would sit down before a trial opened and make a case as best we could. There was no compunction about lying at all. That is, from time to time there were many cases—I think that I could recall instances in which 50 or 60 witnesses knew many hours before they came to court that they were going there to lie. For example, John Jones might have been accused of striking a policeman at a demonstration. We would produce witnesses who would swear that John

to deny Party membership in connection with the expulsions in the Machinists Union." Gov. Ex. 9, p. 2.

"1. That we declare it to be the Party policy to keep our members in the trade unions and that the members in the trade unions must carry on a vigorous struggle to prevent their expulsion. As a means of combatting the methods of the bureaucrats to expell the Communists, it is necessary that our members, wherever possible deny membership in the Party in order to retain membership in their union. In other circumstances the members shall take the position that they have withdrawn from the Party in order to avoid their expulsion. It is also permissible if members must, to sign statements declaring that they are not members of the Party, or the Tuel in order to avoid expulsion from the union." Gov. Ex. 9, p. 3.

Exhibit "E"—(Continued.)

Jones was seen by them 60 feet away from the policeman at the time that he was struck.⁵⁵

A corollary of this policy is the adoption by Party Members of aliases to be used upon the membership rolls of the Communist Party, in order that their identity should not be disclosed if such lists fall into the hands of employers or officials. This strategy was particularly important in the case of persons whose known membership in the Party would create embarrassment or loss of employment, such as in the case of Government employees, Labor leaders, and teachers.⁵⁶ (77)

This policy also takes the form of instructions to Party Members that they should lie in "Capitalist Courts" when it is necessary for the good of the Party. In this connection, the witness Gitlow testified that William Z. Foster concealed his membership in the Communist Party and swore falsely under oath in connection with the Bridgeman trial,⁵⁷ and Schnering testified that "truth is no issue as far as a Marxist, a Communist or Bolsheviki, whichever you wish to call him, is concerned; truth is scoffed at. * * * Lenin says a bourgeois truth presupposes a lie. All the Bolshevists are liars. Truth is a bourgeois quality with which all good Bolsheviks may easily dispense."⁵⁸

(55) Tr. p. 422.

(56) Tr. pp. 65, 77-78.

(57) Tr. pp. 172-174.

(58) Tr. p. 423; see also pages 422-424; 174-175, 749-751, 1435-1437; see also Gov. Ex. 105, p. 50; Tr. 1274-1275.

Exhibit "E"—(Continued.)

Trade Union Policy After 1935

In March 1935, the T. U. U. L. was liquidated. During the years 1933 and 1934, particularly, the T. U. U. L. and the Communist Party had encouraged and participated in a series of successful strikes. Prior to the disbanding of the T. U. U. L., its unions had been largely absorbed by the A. F. of L. With its dissolution there was instituted a new policy on the part of the Communist Party in relation to its trade union activities.⁵⁹

The new policy was apparently in line with a program outlined by the Comintern in its 1935 convention.⁶⁰ It has taken the form of penetrating into the (78) established trade unions as during the period of the 1920's. By this time, however, the established trade unions had become more receptive to a militant and progressive program. Thus, William Z. Foster was able to say in 1939 in the 20th anniversary number of "The Communist,"⁶¹

The general position of the Communists in the trade unions, as well as their organizational methods, has changed fundamentally in the present period as compared with earlier stages in the life of our Party. The Communists in the trade unions are no longer merely an op-

(59) Gov. Ex. 164, pp. 800, 812.

(60) See testimony of Rushmore quoted at p. 81 post.

(61) Gov. Ex. 164, p. 814.

Exhibit "E"—(Continued.)

position force, as they were in the T. U. E. L. and T. U. U. L. years. Today, occupying many official posts in both A. F. of L. and C. I. O. Unions, and everywhere working in full co-operation with progressive leaders, and rank and file, Communists share directly, although as yet usually in a minor measure, in the official responsibility of carrying on the movement. Communists, as officers, are participating in tasks of policy-making and administration in A. F. of L. and C. I. O. Unions on a scale quite unknown in the periods of the T. U. E. L. and T. U. U. L., and they are helping to build the highest type of trade union leadership the American Labor Movement has yet known. This new leadership, based upon efficient service and democratic responsibility to the rank and file, has broken completely with the many autocratic and reactionary practices which have so long disgraced many sections of A. F. of L. officialdom. (79)

With the change in trade union policy starting about 1935, or perhaps as a part of that policy, the chief emphasis of the Party became the identification of its program with the ideals and traditions of democracy. This phase of the program is described by the witness Rushmore as follows:

A. (Examining booklet)⁶² This is not only a Communist pamphlet, but probably one of

(62) Gov. Ex. 146.

Exhibit "E"—(Continued.)

their most important ones. This gave the new line of the Trojan horse policy of the frontal organizations in adopting the democratic front and things like that. It was distributed in tens of thousands of copies throughout the United States. I would say this is one of their major publications of the last five years.

Q. When you say adopted Trojan horse tactics, what do you mean by that?

A. It stems from the old fable of the Trojan horse. I believe Dimitroff referred to it in this particular pamphlet as boring from within. The Communists decided at the Communist International Convention at Moscow in 1935 that their old tactics weren't getting them very far and they would have to, I believe the phrase was, penetrate the bourgeoisie trade unions—that meant A. F. of L.—and bore from within and attempt to get leadership in these unions, and they even soft pedaled their attacks on religion and tried to bore from within the churches. It extended from without the sphere of American social and political life to penetrate, to capture, and to control.

Q. Was all that for the purpose of deceiving?

A. Certainly.⁶³ (80)

With further reference to the new "democratic front," Rushmore identified a copy of the consti-

(63) Tr. pp. 757-758.

Exhibit "E"—(Continued.)

M. W. I. U. for a month or two, after which it lapsed for five or six weeks before his group took it over. Thus, taking September as the date when the "Waterfront Worker" was first published by the M. W. I. U. and allowing one or two (90) months for its publication by that group, plus five or six weeks during which it was not published at all, the date at which the Bridges' group took it over would be sometime in December 1932.

In the 1939 proceeding, evidently the early issues of the "Waterfront Worker" were not in evidence to permit verification of the oral testimony by the dates of the papers themselves. In the present hearing, several early copies of the "Waterfront Worker" were put in evidence by the Government. I conclude that the first issue of the "Waterfront Worker" under the alien's sponsorship was the issue for December 1932. This conclusion is based upon the following items of evidence:

1. The earliest copy of the "Waterfront Worker" introduced in evidence was dated February 1933, and is numbered "Volume 1, No. 2," indicating that there had been one earlier issue in this series. In the February 1933 issue, on page 1, there is a reference in one of the items to the "first issue" and on page 6, a reference is made to the "December issue." The "first issue" and the "December issue" are evidently the same and constituted Volume 1, No. 1, of the series.

2. The "Waterfront Worker" for Sept. 15, 1933, carries an item on page 1, stating that it had been

Exhibit "E"—(Continued.)

rious habits. The paper immediately found wide interest among the longshoremen.

Then, of course, we had no set plan. All we used to say in the paper was "to organize."⁷⁷

* * * * *

Q. Do you know how long the Waterfront Worker had been running at the time when you first took it over?

A. Not very long. It is pretty hard to remember. If I recall, we took it over around September or October 1932, or it was running then and we took it over later. I can't set the exact date. I would have to get the original issues and check it up.

Q. I think you said, Mr. Bridges, in your prior testimony, about September 1932. Something like that. But the point I want to know is about how long it had been running prior to that time.

A. I can't remember. Maybe a month or two. My first recollection of ever seeing it was September of 1932.⁷⁸

From the latter excerpt, it is to be noted that Bridges is not sure whether his group took it over in September 1932, or whether that is the time when the paper first appeared under the auspices of the M. W. I. U. It is to be noted also that it is his testimony that the paper had been published by the

(77) Tr. pp. 2550-2551.

(78) Tr. pp. 2562-2563.

Exhibit "E"—(Continued.)

had been instrumental to a large degree in the publication of this paper by a group of longshoremen, which included himself, after its alleged abandonment by the M. W. I. U. He was also responsible for its final abandonment in 1936. There is, however, a material variance in his testimony on the two hearings, particularly with regard to the time when he and the group of longshoremen with whom he was associated took over the publication. In the 1939 hearing, he testified that his group started the paper in September or October 1932, but in the present hearing, he stated that that date was an error and that his group did not take over the paper until September 1933. The evidence concerning the date when Bridges and his group assumed publication of the "Waterfront Worker" is significant, not only because the date itself is important, as bearing on M. W. I. U. control while he was an editor; but also because the effort to modify the statements made in 1939 is enlightening in itself.

In the 1939 hearing, the alien testified:

There was really no start toward real organization until September 1932, when we started our waterfront paper. The waterfront paper generally dealt with the ills of the longshoremen. In other words, these various straw bosses or gang foremen along the waterfront, who we used to call slave drivers, they were written up in the (89) paper in their va-

Exhibit "E"—(Continued.)

State of California. He was removed from this office in 1937, when his union was expelled from the A. F. of L., perhaps due to its participation in the 1936-1937 strike, hereafter referred to.⁷⁵

After the expulsion of the I. L. A. from the A. F. of L., it changed its name to "International Longshoremen and Warehousemens Union," (I. L. W. U.), and affiliated with the C. I. O. in July 1937. Immediately thereafter, Bridges was elected Pacific Coast District President of that union, and has held the office ever since. At the present time, he also holds the office of C. I. O. Director for the State of California, and is a member of the National Executive Board as well as a member of several National Committees of the C. I. O.

B. The Waterfront Worker

The "Waterfront Worker" was a mimeographed newspaper published from December 1932 until the summer of 1936. It is the Government's contention that this newspaper was an instrument of the M. W. I. U., controlled and dominated by that organization and by the Communist Party and, further, that the alien's admitted connection with it establishes that he was affiliated with the M. W. I. U. and the Communist (88) Party.⁷⁶ The alien himself gave testimony both in the 1939 hearing and in the present proceeding, to the effect that he

(75) See pages 123-132, post.

(76) The M. W. I. U. has already been identified as a T. U. U. L. affiliate and through it an affiliate of the Communist Party, see page 59, ante.

Exhibit "E"—(Continued.)

a part of the scheme for organizing the men into a union and fighting the waterfront conditions heretofore described.⁷⁴

The coast convention of maritime workers unions, for which the Albion Hall Group had agitated, was convened in San Francisco early in 1934. At this convention, various demands were asserted, and a strike dead-line set; after which the actual strike was postponed at the request of the President of the United States, and a mediation board set up, whose compromise agreement was repudiated by the coast longshoremen. On May 9, a strike was called. The M. W. I. U. struck in sympathy on May 10, and the International Seamen's Union (I. S. U.) at first resisted, but was forced into the strike on May 15th.

Bridges was elected chairman of the strike committee in his I. L. A. Union, and also of the Joint Marine Strike Committee, which was set up about June 17. During this period, he was also a member of the Joint Executive Committee and a delegate to the San Francisco Labor Council. He emerged from the strike which was settled July 31, 1934, as a recognized leader in the Pacific Coast labor movement. He was President (87) of the local I. L. A. from 1934 to 1936, and was elected Pacific Coast President of the I. L. A. in 1936. Also in that year he became a member of the A. E. of L. Executive Committee, and Vice President for the

(74) This matter is treated elsewhere, pages 88-97, post.

Exhibit "E"—(Continued.)

a fight to oust the then President of the company union. It also insisted upon a regular accounting of funds. The Albion Hall Group was composed of from ten to thirty members, which functioned "more or less secretly," and had for its purpose the proper organization of the union meetings. The meetings of the Albion Hall Group were held just prior to the regular union meetings, in order that members might go into such meetings with a definite program. Its existence was not mentioned in the union meetings until after certain individuals had dropped out of the group, offered criticism, and challenged the group's policies. When this occurred, members of the group would openly defend it and its policies.

Bridges stated that the only requirements for membership in the Albion Hall Group were, that a member also be a member of the I. L. A. Union, a working longshoreman, and in accord with the group policies. The group was finally successful in putting through a program calling for a convention of all Pacific Coast maritime unions. It is noteworthy that practically all of the decisions of this group were ultimately adopted in the union itself.

In December 1932, or January 1933, there came into existence on the waterfront a mimeographed paper called the "Waterfront Worker." In the 1939 hearing, Bridges testified that he, with others, started the waterfront paper in September 1932 as

Exhibit "E"—(Continued.)

a week. (3) The "speed-up," a method of getting a greater amount of work out of the men by hiring fewer, and requiring them to do the same amount of work, resulting in overtaxing them physically and creating greater working hazards in already hazardous work. (4) "Blue Book Unions," company unions, controlled by the employers which enabled them to carry out and perpetuate the above described practices. These company unions were in existence from the time Bridges started to work on the waterfront, until October 1933, when they were forced out of existence by the newly revived and militant I. L. A. Union, of which Bridges became an early member.

Bridges testified that there were Communist Party agitators on the waterfront as early as 1931, also speakers and propagandists for the I. W. W. and the M. W. I. U. They distributed literature. The success of the I. L. A. in reorganizing and securing a large (85) membership in 1933 was attributed by Bridges both to the ground work laid by the agitators and also to the National Recovery Administration's encouragement of unionizing labor at that time.

In 1933, about July, he organized a group within the Union, called the "Committee of 500," also known as the "Albion Hall Group." This group originally strove for immediate election of officers, adoption of a constitution, and regular membership meetings. It also worked to keep the company union from again stifling the I. L. A. and led

Exhibit "E"—(Continued.)

in early 1922, until about June 1933, he belonged to various Company Unions, which he "does not count as unions," and also belonged to the International Longshoremen's Association (I.L.A.), an A. F. of L. Union, for a short period in 1924, when that union made an abortive attempt at reorganization. In June 1933, he again joined the I. L. A. in San Francisco.

Bridges gave a description of the conditions prevailing upon the waterfront during 1934 and prior thereto, which gave rise to the 1934 Waterfront Strike.

These conditions were chiefly: (1) The "black list," which was a form of discrimination against all workmen who expressed themselves in opposition to existing conditions. Such workmen were blacklisted by the employers, thus preventing their employment. There (84) were probably only three employers who did not participate in this form of discrimination. (2) The "shape-up," a method of hiring longshoremen, whereby candidates for employment were required to congregate each morning on the docks, where the foremen would select their crews. This method of employment resulted in grievances, particularly, the "kick back," a petty form of graft by foremen who would require a return to them of certain percentages of the earnings of those selected; and favoritism, the "star gang," an unequal distribution of available work, preferred men often earning from \$40.00 to \$70.00 a week while others got from \$8.00 to \$20.00

Exhibit "E"—(Continued.)

for declaration of intention.⁷² On March 28, 1939, he filed a declaration of intention.⁷³ This last declaration is apparently still pending:

The papers filed as above described contain inconsistencies with reference to Bridges' date of birth and date of marriage.

While he was shipping from Australian ports, he belonged to the Australian Seamen's Union. Immediately upon coming to San Francisco, in 1920, he joined the Sailors Union of the Pacific (S. U. P.), an A. F. (83) of L. Union, and was a member of this union until June or July 1921, or, at least, until after the 1921 New Orleans strike. He held several minor positions in this union, such as memberships on committees, and served as picket captain during the New Orleans strike. At this time he was also a member of the Eastern Gulf Sailors Association. In New Orleans, during the strike, he joined the Marine Transport Workers Union No. 516, affiliated with the Industrial Workers of the World (I. W. W.). He was a member of this union from June or July 1921 to the early part of 1922. He dropped out of the I. W. W. because, as he says, "I didn't like some of the tactics and policies of the union, and did not believe that they would bring about the things I had in mind as an individual at that time."

From the time he dropped out of the I. W. W.

(72) Gov. Ex. 297.

(73) Gov. Ex. 296.

Exhibit "E"—(Continued.)

of fifteen, shipping in and out of Australia as an able-bodied seaman. He finally left Australia late in 1919 and arrived in the United States at the Port of San Francisco in April 1920, as a member of the crew of an Australian ship. He left the ship at San Francisco and has never returned to Australia. He had been in the United States previously in the year 1918, but did not make an "entry" at that (82) time. From April 1920 until about September 1922, he worked on American ships, the last few months of this period on a ship of the U. S. Geodetic Survey. Late in 1922 or early in 1923, he began work ashore with a paint firm in San Francisco and later went to work as a longshoreman, and continued in such work until 1934, when he became a trade union official. His duties as a trade union official have furnished his occupation since that time.

Bridges has begun proceedings for admission to citizenship three times. He filed his first declaration of intention in New Orleans, La., on July 13, 1921.⁶⁹ He allowed this declaration to lapse. On June 15, 1928, he filed in San Francisco, California, a preliminary form for petition for naturalization,⁷⁰ and on August 9, 1928, a declaration of intention.⁷¹ This declaration he also allowed to lapse. On May 7, 1936, he filed another preliminary form

(69) Gov. Ex. 277.

(70) Gov. Ex. 278.

(71) Gov. Ex. 279.

Exhibit "E"—(Continued.)

ary traditions and the rediscovery and reevaluation of American history in general." ⁶⁷

Rushmore, who was a member of the Party until December 1939, testified that despite the adoption of the (81) "Trojan Horse" policy starting about 1935 or 1936 in this country, the Communist Party has nevertheless continued circulating and teaching the same fundamental doctrines and has circulated and advised the reading of literature to the same effect, and that the objective of the Communist Party is still fundamentally the overthrow of existing bourgeois governments by force and violence. ⁶⁸

SECTION II. EVIDENCE RELATING TO THE ALIEN'S MEMBERSHIP IN AND AFFILIATION WITH THE COMMUNIST PARTY AND ASSOCIATED ORGANIZATIONS

A. Harry Renton Bridges, His Personal History and Connection With the Labor Movement

Bridges' alienage is not disputed. He is a citizen of Australia, having been born in Melbourne, Victoria, on July 28, 1901. He received his formal education in Australia. He attended Government schools and St. Brandam School in Melbourne and the Christian Brothers College in West Melbourne. He then worked for a time in the office of a stationery firm. Then he went to sea at about the age

(67) Gov. Ex. 164, pp. 800, 801-802, 813.

(68) Tr. 780-797.

Exhibit "E"—(Continued.)

tution and bylaws of the Communist Party of the United States,⁶⁴ which illustrated what he described as the "Trojan Horse" or "watering down" policy. With regard to this document, he testified:

A. (Examining pamphlet.)⁶⁵ This was widely distributed, principally because this is a new constitution for the Communist Party in which they set forth their Trojan horse policy and watered down the more revolutionary aspects of their program, at least temporarily, and in this constitution they hail in the first paragraph the traditions of Jefferson, Paine, Jackson, and Lincoln, which, in '34, all of these national heroes in '34 they were declaring as bourgeois democrats and fakes and everything like that. This constitution was then widely distributed for its effect on the front organizations. People in these front groups who didn't know much about the Communist Party from reading this would think it is a left wing form of the New Deal.⁶⁶

Earl Browder and William Z. Foster, too, have pointed out the new emphasis placed by the Communist Party upon the "American democratic traditions" and "the revival of American revolution-

(64) Gov. Ex. 158.

(65) Gov. Ex. 158.

(66) Tr. pp. 768-769.

Exhibit "E"—(Continued.)

advocating a certain policy for ten months. This relates the advocacy of that policy back to December 1932 (as there was no issue for January 1933), and indicates a continuous policy during that entire period.

3. The December 1934 issue carries an announcement concerning the Third Birthday Party of the (91) "Waterfront Worker," which indicates inferentially that the then existing "Waterfront Worker" had been "born" at least two years previously, in December.

4. References are made in various other publications indicating that the December issue was the first, and that the February 1933 issue was the second of the series.⁷⁹

It is noted that of the issues of the "Waterfront Worker" in evidence, four of the five, published prior to September 15, 1933, acknowledge the assistance of the M. W. I. U., while the September 15 issue and succeeding ones do not expressly acknowledge such assistance. In the present proceeding, the alien stated that the M. W. I. U. had started the publication of the "Waterfront Worker" in January 1933⁸⁰ and that his group had taken

(79) Gov. Ex. 125 and Gov. Ex. 131 and the comments with reference thereto on page 96 post.

(80) It is probable that this date was arrived at because the Feb. 1933 issue was numbered Volume 1, No. 2. From other evidence I have concluded that Volume 1, No. 1, came out in Dec. 1932, rather than Jan. 1933. This variance, however, is of no great significance.

Exhibit "E"—(Continued.)

it over in September 1933 and had nothing to do with it prior to the latter date.

My analysis of the testimony of the alien in this respect, together with an examination of the copies of the "Waterfront Worker" introduced in evidence, convinces me, however, that there was no change in the sponsorship of the "Waterfront Worker" in September 1933, and that the alien and his group were responsible for its publication from December 1932 until its abandonment in 1936. These conclusions are based (92) upon the following facts: (1) They are substantially in accord with the alien's testimony in the 1939 proceeding, at which time there was apparently less reason to disclaim association with the paper in its early stages. The change of his testimony with regard the date in the present proceeding suggests an effort to avoid the implications in his earlier testimony. (2) A comparison of the issues of the paper before and after September 1933 fails to disclose any substantial change in its policy but, on the contrary, demonstrates a striking continuity of program and policy, including an extremely cooperative attitude with regard to the M. W. I. U.⁸¹ (3) The paper shows no appreciable variance in mechanical or technical details before and after September 1933.

(81) Note in this connection, particularly, a reference in the Sept. 15, 1933, issue (Gov. Ex. 281) to the statement that the "Waterfront Worker" had advocated a certain policy for ten months. This indicates just the opposite of the alien's contention.

Exhibit "E"—(Continued.)

(4) The numbering of the paper continues in the same consecutive series with no break at the September 15 issue. (5) Although the alien in the present proceeding disavowed any connection with the paper prior to September 1933, upon cross-examination he admitted that the address 830 Market Street was the first address used by his group. This address was used only before July 1933. This testimony is consistent only with the fact that he did have a connection with the paper prior to September 1933. (6) The early issues of the "Waterfront Worker" beginning with December 1932, are in complete harmony with the description given by the alien in 1939, of the paper, at the (93) time it was first taken over "by his group."⁸² One of the major themes of the early issues was the plea for organization. By Sept. 1933, other evidence shows that Local 38-79 of the I. L. A., to which Bridges and his group belonged, was organized and that his group was then active in fighting the leadership of the union and in other ways exerting a strong influence within the Union itself through the paper and through the Albion Hall Group.

I conclude further, that the "Waterfront Worker" was from December 1932 to its abandonment in 1936, an instrument of the M. W. I. U.,⁸³ and of the Communist Party and that it was under the domination and control of those organizations dur-

(82) See page 90, ante for the pertinent excerpt from that testimony.

(83) This organization was liquidated in 1935.

Exhibit "E"—(Continued.)

ing that period. These conclusions rest primarily upon the following grounds: (1) The acknowledged cooperation with the M. W. I. U. in the early issues of the paper and subsequent favorable treatment of the M. W. I. U., T. U. U. L., and other Communist-sponsored organizations during the paper's entire existence, (2) Consistent attacks upon the so-called "reactionary" leaders of the A. F. of L. (3) Support of the Communist candidates for political office. (4) Advice to read Communist literature. (5) The use of addresses of Communists or Communist-affiliated organizations. The first address was 830 Market Street, San Francisco, Room 421, headquarters of The Needle Trade Workers Industrial Union, a T. U. U. L. affiliate. The second address was 3470 19th (94) Street, San Francisco, a building occupied by Walter Lambert, an admitted Communist, who, on his application for electric service⁸⁴ gave his occupation as Manager, Workers Ex-Service Men's League, a Communist front organization.⁸⁵ The third address was Post Office Box 1158, San Francisco, which box was rented by Harry Glickshon,⁸⁶ generally known

(84) Gov. Ex. 219, identified by witness George B. VanSyckle, adjuster for the Public Gas and Electric Co., as applications for electric service at 3470 19th Street which service was furnished from August 1933 to March 1934.

(85) See page 74, ante.

(86) Gov. Ex. 211 and Gov. Ex. 212, identified by Daniel B. Black, Assistant Cashier of the San Francisco Post Office, as the application of Harry

Exhibit "E"—(Continued.)

by his alias, Harry Jackson, an admitted Communist and M. W. I. U. organizer, who had been responsible for the publication of the "Waterfront Worker" under the sponsorship of the M. W. I. U.

Even crediting the alien's explanation that addresses were used which would avoid discovery of those responsible for the publication of the "Waterfront Workers," by employers, the use of these addresses demonstrates a close cooperation with Communists and Communist Organizations. The alien's assertion that he was not aware that the addresses were those of Communists is unconvincing. In attempting to explain, he enmeshed himself in various contradictions and inconsistencies which can only strengthen the conclusion of the Communist connections of the paper.⁸⁷ (95) (6) Reference in of-

Glickshon for a post office box, and the accounting sheet for box number 1158 which was assigned to him. Box rental was paid from Feb. 6, 1934, to June 30, 1936.

(87) Some of these contradictions have already been pointed out, such as his explanation of the address 830 Market Street at a time when he assertedly had no connection with the paper. Another occurs in his statement that Herman Mann had something to do with the changes of the address. He had previously explained that none of those directly associated with the editorship of the paper had anything to do with these addresses, but at another point it appears from the alien's own testimony that Mann was one of the original editors. Elsewhere, he explained that the fear of discovery by waterfront employers and other officials induced them to send others to the addresses who could not be discriminated against if they were discovered.

Exhibit "E"—(Continued.)

ficial Communist Party literature to the "Waterfront Worker" consisting of favorable criticism and suggestions, which were subsequently acted upon.⁸⁸ (96)

Later, he stated that these persons were probably followed and seen as they turned the mail over to the editors. When it was pointed out that this should, under his theory, have led to discrimination against them, he stated that after four or five months they no longer feared discrimination since they then had a strong Union, which could protect them. It was after this period, however, that the change of address from 3470 19th Street to the post office box occurred, which change evoked the explanation that Jackson was used in order that the real editors might escape discovery. His devious explanation in connection with the use of Jackson was made in the face of his statement that they no longer cared after four or five months and his statement in the 1939 proceeding that he was "pretty sure the police department, the Industrial Association and all such groups" knew who was responsible for the paper, or who were its editors.

(88) Thus, the "Party Organizer," official organ of the C. E. C. of the Communist Party for Jan. 1933 (Gov. Ex. 131), reviews the Dec. 1932 issue of the "Waterfront Worker" and criticizes its failure to mention the role of the M. W. I. U. in the Labor movement. Subsequent issues of the "Waterfront Worker" carried such favorable comment as evidenced by the following Government exhibits: 204, 205, 247, 283, 248, 249. The "Party Organizer" for Feb. 1933 (Gov. Ex. 125) comments upon various items in the first two issues of the "Waterfront Worker" and offers suggestions with regard particularly to the need for, and methods of, organization of waterfront employees. This "line" too is subsequently emphasized.

Exhibit "E"—(Continued.)

(7) Other "thin" explanation or rationalizations of the change in testimony between 1939 and 1941: (a) The alien asserted that there was a lapse in the publication of the paper just prior to his taking over the editorship. There was no such lapse just prior to September 1933. This explanation was given before it appeared that the Government had copies of these papers. In the 1939 hearing Bridges promised to bring to the hearing a file of the earlier issues of the paper, but later stated he was unable to procure them. The dates given by the alien in the 1939 hearing are consistent with such a lapse in the publication between September and December 1932. (b) Upon being shown one of the earlier copies of the "Waterfront Worker," he suggested that use of the word "stevedore" indicated the writing had been done by persons unfamiliar with the waterfront. This was one of the reasons assigned for the failure of the paper under the M. W. I. U. Later issues admittedly, under the editorship of his group, used the word "stevedore" in a sense not distinguishable from the use in the earlier issues.

CONCLUSION

Having concluded, as heretofore stated, that the "Waterfront Worker" from December 1932 until its abandonment in 1936 was an instrument of the M. W. I. U.⁸⁹ and of the Communist Party, and fur-

(89) See note page 88 ante.

Exhibit "E"—(Continued.)

ther that the alien was associated with it as one of its editors, I conclude that the alien's association with the "Waterfront Worker" demonstrates his affiliation with (97) both the M. W. I. U. and the Communist Party, if not actual membership in either, or both, of those organizations.

C. COOPERATION WITH THE COMMUNIST PARTY AND THE M. W. I. U. AND ASSOCIATION WITH THEIR MEMBERS DURING THE 1934 STRIKE

I have already concluded that the alien was affiliated with the Communist Party and the M. W. I. U. as evidenced by his association with the "Waterfront Worker" during the years 1932-1936.⁹⁰ Some further items of evidence establish that the alien cooperated with these organizations and their members particularly during the 1934 strike.

Bridges admitted that the I. L. A. strike committee, of which he was chairman, cooperated closely with the M. W. I. U. with his full approval. The M. W. I. U. notified the I. L. A. before the strike that it would cooperate. Bridges was instrumental in getting the I. L. A. to go on strike, which it did on May 9, 1934, followed the next day by the M. W. I. U. He was well acquainted with Harry Jackson⁹¹ and worked with him so far as the strike was concerned. When the question arose as to whether dele-

(90) See p. 88 ante.

(91) See page 95 ante.

Exhibit "E"—(Continued.)

gates from the M. W. I. U. should be seated on the Joint Strike Committee, Bridges favored it. He was active at this time in inducing seamen to join the M. W. I. U. and actually conducted groups of seamen to M. W. I. U. headquarters for that purpose, although he was aware at the (98) time that the goal stated by this organization was the establishment of a "Revolutionary workers' government." The significance of the help of the M. W. I. U. in the strike is attested by Bridges' statement that the strike would have been lost without it.

It is also significant that Bridges met and talked with Sam Darcy, District Organizer of the Communist Party, "quite a few times" during the 1934 strike. On June 22, 1934, the San Francisco Central Labor Council, of which Bridges was a member passed a resolution as follows:

Therefor, be it resolved, by the San Francisco Labor Council in regular meeting assembled on Friday, June 22, that we repudiate all Communist Organizations, especially the so-called Marine Workers Industrial Union, and denounce their efforts to inject themselves into an industrial conflict for the sole purpose of making converts to Communism.

Bridges opposed the adoption of this resolution both in the Central Labor Council and in his own union, and notified Darcy before its adoption that the resolution was contemplated. He continued to meet with Darcy thereafter.

Exhibit "E"—(Continued.)

Bridges' admitted meetings and associations with leaders of the Communist Party and of the N. W. I. U. during the 1934 strike assumes additional significance from the fact that Bridges was extremely busy with many Committee and union meetings and activities during this strike period. It is highly improbable that Bridges would have taken time for such meetings unless they had a direct bearing on his strike activities. (99)

Near the beginning of the strike, three representatives of the Communist Party, Sam Darcy, Lawrence Ross, and probably Elmer Hanoff, came to the strike committee of which Bridges was chairman and offered the services of the "Western Worker," the Communist Party newspaper, to the strike committee. This offer was accepted with Bridges' approval, and thereafter the "Western Worker" published a daily strike bulletin free of charge.

The alien's cooperation with the Communist Party, the N. W. I. U., and the members of those organizations was recognized and appreciated by the leadership of those organizations. William Z. Foster, in his book, "From Bryan to Stalin,"⁹² says:

In 1932, on the then largely unorganized San Francisco waterfront, the C. P. and T. U. U. L. carried on their work intensively along two main lines: the seamen were organized into the T. U. U. L. Marine Workers Industrial Union

Exhibit "E"—(Continued.)

and the longshoremen into the A. F. of L. International Longshoremen's Association. Following out this policy, there was in 1933 a strong N. W. I. U. organization built up along the Pacific Coast and, together with other militant workers, the T. U. U. L. forces succeeded in organizing a large I. L. A. local union among the disorganized Frisco dock workers. The leader of the longshoremen was Harry Bridges and the head of the local M. W. I. U., Harry Jackson; both left wing militants. The Secretary of the California district of the Communist Party was Sam Darcy.

The strike movement began among the long- (100) shoremen early in the spring of 1934. The San Francisco local had taken the lead in lining up the weak I. L. A. Coast locals to present demands to the employers. The employers, aided by corrupt I. L. A. top leaders, tried the usual schemes of delay, conciliation, and arbitration to break up the rapidly developing militant movement. Rejecting these maneuvers, the I. L. A. locals declared a strike on May 9th and had the whole Pacific Coast tied up within two days. Harry Bridges was elected Chairman of the I. L. A. strike committee, and the Western Worker, local Communist organ, was endorsed as the official strike journal.⁹³

(93) Gov. Ex. 135, p. 260. In the same account Foster goes on to say: "But it was in the big Pacific Coast Marine and San Francisco general strike

Exhibit "E"—(Continued.)

Similarly, William F. Dunne in his pamphlet, "The Great San Francisco General Strike," writes:

The Marine Workers Industrial Union—affiliated to the Trade Union Unity League—raised the question of a general strike. The Left wing in the leadership of the I. L. A. and the Joint Strike Committee of the Waterfront Unions, headed by Harry Bridges, in San Francisco, endorsed the proposal to call upon the Bay Counties' unions for a general strike.

Harry Bridges and the committee of strikers brought the question of a general strike to the Central Labor Councils in San Francisco and Oakland. The official leaders opposed it. (101) Bridges and the committee then began a systematic canvass of all local unions affiliated to the Central Labor Councils.

* * * * *

The influence of the M. W. I. U. in the strike movement was far greater than its membership figures would indicate. It was the initiator of the united-front program which solidified the ranks of the marine workers and it had a great part in the general strike in the Bay Counties.

that the C. P. and T. U. U. L. did their most important strike work in this period. In fact, in this struggle their influence was decisive. It so happened that I was in San Francisco during the general strike although too sick to take an active part in it. It was the greatest torture for me to be in the midst of such a glorious struggle and yet to be unable to help."

Exhibit "E"—(Continued.)

"The leadership passed into the hands of a left-wing group, working in fraternal cooperation with the M. W. I. U., headed by Harry Bridges.

The West Coast strike reached its highest point in San Francisco because the leadership of the waterfront workers there was class conscious, militant and determined enough to take the question directly to the rank and file and win them for united front action over the heads of the official A. F. of L. leaders.

The strike reached its highest point in San Francisco because the influence of the Communist Party in the waterfront unions was strong enough to defeat the reactionary leadership.⁹⁴

In the Party Organizer for August 1934, an article entitled "Two Lessons from the San Francisco General Strike" carries the following:

The answer to this question is clear. The longshoremen took the control of their strike from the hands of the labor bureaucracy and (102) placed it in the hands of a rank-and-file leadership, which firmly resisted all efforts of the fakers and the government to betray it. The masses in Toledo and Milwaukee and Minneapolis were in motion, the Party played a role in all of these strikes, the workers adopted our

(94) Gov. Ex. 191, p. 5, 8-9, 46, 47.

Exhibit "E"—(Continued.)

slogans and attempted to carry them out, but were defeated by the strategy and tactics of the bosses and the bureacrats. Why could this occur? Was it because the workers in Toledo and Milwaukee and Minneapolis were less militant, or less determined, than the longshoremen in San Francisco? No, the answer lies in the fact that in these places the Party was working from without. We did not have a firm base among the workers. But in San Francisco the Party had carried out a policy of concentration among the longshoremen, who are a decisive section of the working class, and had built a strong opposition movement within the reformist union. Consequently when the labor leaders appeared before the workers with their betrayal policy, there was a strong organized group within the union, which was able to expose their maneuvers and defeat them.⁹⁵

Other such expressions are referred to in the footnote.⁹⁶

These associations and transactions are, in my opinion, further evidence of the alien's affiliation with the Communist Party and the M. W. I. U. at the time they occurred and therefrom I find that Bridges was affili- (103) ated with the M. W. I. U.

⁹⁵ Gov. Ex. 236, pp. 1-2.

⁹⁶ Gov. Ex. 191, pp. 34, 37, 67; Gov. Ex. 165, pp. 24-25; Gov. Ex. 138, p. 107.

Exhibit "E"—(Continued.)

and the Communist Party at the time of the 1934 strike.

D. HARRY LUNDEBERG

Harry Lundeberg, a prominent trade union figure on the Pacific waterfront for many years, was called as a witness by the Government. He is the Secretary-Treasurer of the S. U. P., Head of the Seafarers' International Union of North America and Vice-President of the State Federation of Labor in California. In April 1935 he was elected the first President of the newly formed Maritime Federation of the Pacific. He occupies a position in the A. F. of L. organization somewhat comparable to that of Harry Bridges in the C. I. O. The two men were friendly from the time they first met in 1934, but beginning in October 1935 they became involved in a series of disputes about trade union affairs, which has embittered their relation to each other.

Lundeberg testified that in the summer of 1935, he was invited by Bridges to have dinner with him and a friend whose name was not disclosed at the Bridges' home. Present at the Bridges' house at the time of this dinner, were Bridges' wife, his stepson and daughter, Miss Norma Perry who was then Bridges' secretary, and another man whom Lundeberg did not know. This man was first introduced to the witness by Bridges under the name of Jacobson, a carpenter. Afterwards, Bridges told the witness that the man was Sam Darcy, who was at that time known to Bridges as a prominent Com-

Exhibit "E"—(Continued.)

munist.⁹⁷ Lundeberg stated that in the course of (104) conversation between Bridges, Darcy and himself, Darcy asked Lundeberg to join the Communist Party, saying that if Lundeberg joined the Communist Party it would do Lundeberg a lot of good, and the Communist Party would give him a lot of support. Darcy also said that Bridges was a member of the Communist Party and Bridges said "You don't have to be afraid because nobody has to know you are a member of the Communist Party." Further, Darcy remarked "We will give you lots of publicity and will build you up and make a great labor leader out of you." In another place Lundeberg testified that after Darcy had asked him to join the Communist Party, as above mentioned, Bridges said, "You don't have to be afraid, because I am one too." In reply to that urging, Lundeberg said, "Well, it is O. K., do what you like, I will do what I like."

Bridges denied that this conversation occurred. He denied that Darcy had ever been at his house, but admitted that Lundeberg was at his house for dinner in 1935.⁹⁸

Lundeberg on cross-examination, stated that he had been interviewed several times by Agents of the Government, beginning in 1939, and that until the day before he gave his testimony he had told the

(97) See pp. 98-9, ante.

(98) The date of this occurrence is somewhat uncertain but it is certain it was between April and September 1935.

Exhibit "E"—(Continued.)

agents that he had no information that Bridges was a Communist. He had, however, repeated the account of the incident to sailors from time to time. He admitted that he had been convicted several times of "fighting" in various parts of the world.

(105)

The question for me to answer is whether the Government has established that Bridges admitted to Lundeberg at the time specified that he was a member of the Communist Party. If he did so admit, it is in my judgment conclusive evidence of the fact. Lundeberg is strongly biased against the alien. On the other hand, Bridges himself is the most interested of all witnesses in his own behalf. The previous contradictory statements of Lundeberg must be taken into consideration, but in this regard we must also notice Lundeberg's statements that he told the Federal Agents that he was not willing to testify and we must recognize the natural reluctance of persons to testify in such proceedings as this. If Darcy was not at the house, as Bridges asserts, it was within the power of Bridges to corroborate his statement in this respect by the testimony of his wife, his stepson and perhaps by his daughter, though she was very young at the time, and by his then secretary, Norma Perry, who previous to the hearing had ceased to occupy that position. None of these witnesses was called, nor was reason given for their absence. These persons were seemingly close to Bridges and would not reasonably be expected to testify in favor of the Govern-

Exhibit "E"—(Continued.)

ment. Their absence weakens Bridges' statement that Darcy was not present at the time that Lundeberg had dinner at his house.

Lundeberg gave his testimony in a natural, rugged, hard-bitted fashion. He impressed me with his truthfulness. He made no effort to conceal his enmity for Bridges. He characterized Bridges' labor record with (106) a damaging phrase, saying "It stinks". He expressed the view that the trade-union movement on the Coast would be better off without him. However, I do not believe his bias would cause him to deviate from the truth.

I reach the conclusion, therefore, that the conversation did take place substantially as testified by Lundeberg and that Bridges did then and there admit to Lundeberg that he was a member of the Communist Party.

E. JAMES D. O'NEIL

James D. O'Neil was produced by the Government. He was obviously hostile. A subpoena was served upon him to appear at the office of the Federal Bureau of Investigation, and he failed to respond. A subpoena was then issued by a District Judge of the United States, and he disregarded its command. He was then cited to appear before the District Judge to answer a charge of contempt. It was after this that he was produced as a witness.

James D. O'Neil was broadcaster and writer. He became editor of the "Voice of the Federation," an official organ of the C. I. O., on the last day

Exhibit "E"—(Continued.)

of 1936. He continued as Editor of the "Voice of the Federation" until the following June, when he became publicity director for the Western Region of the C. I. O., and as such shared offices with Bridges in the headquarters of the C. I. O. He handled practically all of Bridges' mail, answered requests made to Bridges for articles to appear in publications, and wrote the articles for Bridges. He held this position for about three years and it is apparent became intimate with Bridges. (107) After leaving this position, he became connected with the broadcast of the C. I. O. News Reporter. In October 1940, while at a radio station in San Francisco, he was interviewed by officers of the F. B. I. on two occasions and went to the F. B. I. office at 111 Sutter Street, and was again interviewed there. The witness stated he was not sure of the date, but other evidence established that it was on October 7, 1940. At that time he answered questions which were put to him, and he testified expressly that the answers which he then gave were true. There was a stenographer present, according to O'Neil, in addition to himself and two men, who were F. B. I. Agents. The Government counsel on O'Neil's direct examination, evidently relying on a statement purporting to have been made by O'Neil to F. B. I. Agents and subsequently introduced in evidence, asked O'Neil questions and received denials as follows:

Q. Did you during any time that you were so employed in Mr. Bridges' office walk into

Exhibit "E"—(Continued.)

his office one day and saw on Bridges' desk a Communist Party book in which Mr. Bridges was putting assessment stamps?

A. No. At this point I want to say that that is exactly what I told the F. B. I. men that questioned me.

Q. Now, just a minute! I haven't asked you that. I am asking you if you saw him.

A. I did not.

Q. You did not?

A. No.

Q. Did you see Mr. Bridges putting assessment stamps in a Communist Party book about (108) 2:00 P. M. in Bridges' office in the Balboa Building at 593 Market Street sometime in 1937?

A. I did not.

O'Neil's interview with the F. B. I. Agents being then referred to, O'Neil emphatically denied that he had made any such statement to F. B. I. Agents as was implied in the above excerpt. He denied that he had ever been a member of the Communist Party, he denied that he had stated to the F. B. I. officers that he was a member of the Communist Party, he denied stating to the F. B. I. Agents that Bridges was a member of the Communist Party. He denied specifically that he had dictated any statement to a stenographer in the F. B. I. office, at the interview of October 7, although he stated that there was a stenographer present while the officers were asking him questions and that she took notes.

Exhibit "E"—(Continued.)

During the course of the examination, Government's Counsel read what purported to be a statement made by him to F. B. I. Agents. O'Neil testified that the statement, while incorrect in the particulars already mentioned as well as in others, was a garbled and incorrect summary of several interviews. Some of the statements were true and others were not, being merely founded on questions which had been put to him, many of which he had answered in a way contrary to what appeared in the statement itself.

The witness further testified that on an evening in the week before he was sworn as a witness, he was again interviewed by the F. B. I. Headquarters, by F. B. I. Agents and by Major L. B. Schofield, Special Assistant (109) to the Attorney General, in charge of the Immigration and Naturalization Service, and he swore that at this interview he stated that he was unwilling to appear to testify in this proceeding and told them that he had nothing to add to the case. He denied stating in the presence of Major Schofield and the officers, and the Counsel that the reason he did not want to appear to testify was because he had been such a close friend of Harry Bridges that if he did testify against him, he would be called a "rat." He admitted that he told them that his work in the Labor Union had always been a clean one, and that absolutely he was going to have no connection with this case. He stated that what he had told the agents of the F. B. I. was true, but asserted that he did

Exhibit "E"—(Continued.)

not say to Major Schofield and the others present, that Bridges was a Communist, or that he saw him paste stamps in his Communist book.

At the close of the testimony of O'Neil, the Government swore Gertrude Segerstrom, a stenographer in the employment of the Government in the F. B. I. Service. She had been with the F. B. I. four years. She testified that on the evening of October 7, 1940, she was called into a room at the F. B. I. offices where there were present James O'Neil and two F. B. I. Agents; that one of the agents, Mr. Cassidy, requested her to take down O'Neil's statement. She was introduced to O'Neil. He sat on one side of a desk and she sat directly across from him. He dictated a statement to her and she took it in shorthand. Occasionally while O'Neil was dictating he would turn to the agents and (110) perhaps make some explanation of what he had said, and perhaps as he did that they may have asked him a few questions. However, he would then turn to her and give her a shorter version of what he had just said. She took only that part of what was said in the room which O'Neil spoke directly to her. She produced on the witness stand her shorthand notes and a typewritten transcription. The important parts of this statement are the following:

I joined the Communist Party in either the latter part of November or the first part of December 1936, under the name of Ben Harrison.

* * * * *

Exhibit "E"—(Continued.)

On another occasion I walked into Bridges' office, it always being my privilege to do so after first having assured myself that he was alone, and there on his desk was a new Party book, which had just been issued and into which Bridges was putting assessment stamps. This was about two o'clock in the afternoon in Bridges' office in the Balboa Building, 593 Market Street, Room 509, in 1937. I expressed amazement that he was doing this openly with the book in plain view on top of his desk. However, he nonchalantly continued to put the stamps in place and then returned the book to his pocket. I knew this was a Communist Party book because I had one myself and it was just like it. It was the general practice to pay your dues to the Communist Party dues collector and, in return, to receive stamps which he tore off from a bloc and which you inserted in your book at your leisure. There is no doubt (111) in my mind but what that was Bridges' membership book in the Communist Party.

* * * * *

On several occasions Bridges reminded me that I had not been attending Party meetings and asked me, "What's the score?" I think I told him it was nothing to nothing in the last of the 9th as far as I was concerned and so far as the Party was concerned, and he advised me to take it easy and not let my own feelings obscure my judgment.

Exhibit "E"—(Continued.)

It is my belief that Bridges never at any time attended any Communist Party meetings. He might have met with one or two of the trusted and highest officials of the Party, as that would be all that would be necessary to conduct any business he had with them.

Bridges never stated to me that he was a member of the Communist Party. It was always tacitly understood and assumed that such was the case.

* * * * *

Everybody in the employ of the C. I. O. and the unions with their headquarters in the Balboa Building, with one exception, were members of the Communist Party. This I know because I attended meetings with them, paid dues at the same time they did. There was no secret, no bones made about it at all. The one exception was Herman Stuyvelaar. When a vacancy occurred in the personnel of the C. I. O. headquarters that vacancy was invariably, without exception to my knowledge while I was there, supplied after consultation with Schneidermann from the Communist Party headquarters. (112)

Mrs. Segerstrom testified that after the statement was finished she read it back to O'Neil and that he made "a couple of corrections," which she explained on the witness stand.

Major Schofield was also sworn and testified in respect to the conversation occurring between O'Neil,

Exhibit "E"—(Continued.)

Government counsel Del Guercio, Assistant Director Connelley, and Agent Cassidy of the F. B. I. and himself, on the 22nd day of April 1941, during the week before O'Neil's appearance at the hearing. He does not mention Agent Smith as being present. Major Schofield gave this testimony:

He (O'Neil) was asked whether he had been a Communist and stated he had been a member of the Communist Party and had been active in its behalf here in San Francisco. He was asked whether or not Harry Bridges was a member of the Communist Party, and he said he was. He then said and volunteered this: That he, O'Neil, so far as he knew, was the only man who had visual evidence of the fact that Bridges was a Communist. We asked him what he meant by that, and he said that on one occasion he had actually seen Bridges pasting dues stamps in Bridges' membership book in the Communist Party.

Major Schofield further testified that O'Neil on this occasion also said:

That he would be known as an enemy of labor if he testified against Bridges and that he would lose all his friends in the labor movement and the labor crowd, and he wouldn't be able to live in San Francisco if he testified against Bridges.

(113)

* * * He said "I am not afraid, but I just won't testify against Bridges." * * * That he wouldn't honor the subpoena and respond to

Exhibit "E"—(Continued.)

It, and then it was explained to him—I took part in this explanation—that if he failed to answer that subpoena we would, of course, under our duty be obliged to ask the Court to subpoena him and a subpoena would be served by a Deputy Marshal. And we pointed out to him the risks he ran if he failed to answer and respond to that kind of a subpoena. He then said that he didn't think that he would testify anyway or answer any subpoena, but he would make up his mind what he was going to do. And he also said that if we forced him to testify we "would be sorry," as he put it.

Major Schofield testified that there was no threat, intimidation, or coercion used in any way. In fact, O'Neil himself testified that there was no intimidation, unless a statement of Major Schofield—that the Government had ways and means to protect him in his position in the radio station at Marysville, where he was employed, could be so construed.

It was strenuously urged by Counsel for the alien at the hearing, and similar argument is made in the alien's brief, that the admission of the statement taken by Mrs. Segerstrom was error and that the statement itself, under the circumstances, was without probative value, and that the testimony of Major Schofield was erroneously received and was without probative value. These contentions are based upon the theory that O'Neil was a Government witness, that he said nothing of value to the Government, and that while it would (114) have been permissible to

Exhibit "E"—(Continued.)

produce contradictory statements of the witness on material points, there were no material points in his testimony in chief, and that impeaching him was merely negating a complete blank. It is to be noted, however, that the witness testified that what he did say to the Government agents in the presence of the F. B. I. stenographer was true and that what he said to Major Schofield was the truth. There was no suggestion that he was attempting to falsify when he was interviewed, or to confuse the Government agents. At the same time, he expressly denied having made the statements vitally material in this investigation.

Whatever may be the common-law rule in relation to the reception of such evidence as that of Mrs. Segerstrom and Major Schofield, in this hearing the parties are not confined to common-law proof.⁹⁹ Hearsay is admissible but the character of such evidence is an element to be used in its evaluation. The principal reason for the exclusion of hearsay at common law is that the opportunity for cross-examination is absent. In the present case, the sanction of cross-examination was present. Although the statement given to Mrs. Segerstrom and the statement made in the presence of Major Schofield were not under oath, there is something equivalent, for O'Neil testified on the stand that he told the truth in his interview with the agents of the F. B. I. and in the interview at which Major Schofield was present.

(99) See page 11 ante; also *U. S. v. Corsi*, 65 F. (2d) 564.

Exhibit "E"—(Continued.)

There is in my opinion, therefore, every reason why this testimony should be heard and considered as substantive proof.¹ It falls within the definition of substantial evidence heretofore quoted.²

There remain the questions of fact as to whether O'Neil made the statements attributed to him by Mrs. Segerstrom and Major Schofield and, if so, whether they embody the truth. Mrs. Segerstrom and

(1) This view is fully supported by Dean Wigmore in the 3rd edition of his work (3 Wigmore: Evidence, 3rd ed., section 1018 (b)); "It does not follow, however, that prior self-contradictions, when admitted, are to be treated as having no affirmative testimonial value, and that any such credit is to be strictly denied them in the mind of the tribunal. The only ground for so doing would be the hearsay rule. But the theory of the hearsay rule is that an extrajudicial statement is rejected because it was made out of court by an absent person not subject to cross-examination. * * * Here, however, by hypothesis the witness is present and subject to cross-examination. There is ample opportunity to test him as to the basis for his former statement. The whole purpose of the hearsay rule has been already satisfied. Hence, there is nothing to prevent the tribunal from giving such testimonial credit to the extrajudicial statement as it may seem to deserve. Psychologically, of course, the one statement is as useful to consider as the other; and everyday experience outside of courtrooms is in accord."

See also *Chicago, St. Paul, Minneapolis & Omaha Railway Company v. Kulp*, 102 F. (2d) 352, 133 A. L. R. 1445 and note at 133 A. L. R. 1454, 1462; *United States v. Graham*, 102 F. (2d) 436, certiorari denied, 307 U. S. 643.

(2) See page 12, ante.

Exhibit "E"—(Continued.)

Major Schofield appeared to me entirely reliable and their testimony deserving full credit. If their testimony is not true, there has been a dastardly attempt to deceive me as the Presiding Inspector, by false testimony, for there is no chance of a mistake here, and if I were to believe that O'Neil was "framed," or his declarations falsified, I should look with suspicion upon the entire case presented by the Government. No such idea finds (116) warrant in the testimony as I heard it and as I have reviewed it. I reach the conclusion that the statement taken in shorthand by Mrs. Segerstrom represents the considered declarations of O'Neil and that the testimony of Major Schofield truthfully sets forth what O'Neil said in his presence.

If O'Neil's statements to Mrs. Segerstrom and Major Schofield were false, and O'Neil had no knowledge or information as to Bridges' Communist membership, he would hardly have been so loath to testify, for nothing he could truthfully have said would have hurt his friend, Bridges. The very lengths to which he went to avoid the witness stand indicate to my mind that he feared his appearance on the stand would be harmful to Bridges. This would be so only if the occurrences narrated in his statements to Mrs. Segerstrom and Major Schofield were true, or he was in possession of other information damaging to Bridges' case. His explanation of fear for his own reputation, should he appear, is tenuous.

Having thus concluded that O'Neil made the state-

Exhibit "E"—(Continued.)

ments attributed to him by Mrs. Segerstrom and Major Schofield, I am also convinced of their truth. I do not overlook O'Neil's repudiation of the statements or Bridges' denials of the facts recited therein.

Taking into consideration all the evidence bearing on this phase of the proceeding, I conclude that it is established that the narrations contained in O'Neil's statement to Mrs. Segerstrom and in his conversation in the presence of Major Schofield are the truth, and I find the fact that in accordance therewith that Bridges was in 1937, a member of the Communist Party. (117)

F. LEE BARLOW

Lee Barlow, a Government witness; is a resident of Seattle, and a member of the Sailors Union of the Pacific, an A. F. of L. Union. He was a delegate to the Convention of the Maritime Federation of the Pacific in Seattle in 1935. He saw Bridges in the Convention and met him personally.

An issue of Communism arose in the Convention on the eligibility of a delegate from the Firemen's Union. On leaving the Convention, on one occasion, Barlow in company with several others, talked with Bridges. The subject of Communism again arose. Barlow asked Bridges what he thought of the Communist Party and Bridges replied that the only way that a young fellow could get ahead in the labor movement today was to join the Communist Party.

Exhibit "E"—(Continued.)

Bridges denied making such a statement as Barlow attributed to him, at any time. There was proof that in 1939 Barlow had stated to a Government representative that he knew nothing about Bridges. It is a very simple statement to which Barlow testified. It is the kind of a statement that a young man curious about Communism would be apt to remember. I think it would be more likely to be remembered by a person in Barlow's position than it would be by Bridges himself.

I reach the conclusion that the greater weight of evidence establishes that the conversation took place. It indicates a sympathetic attitude toward Communism in line with other evidence as to Bridges' membership in, or affiliation with, the Communist Party. (118)

G. RICHARD AND DAWN LOVELACE

Richard and Dawn Lovelace were husband and wife. Richard Lovelace died March 13, 1941, before the hearing in this proceeding. Dawn Lovelace was sworn as a witness. A signed statement of Richard Lovelace given to the Government on Sept. 12, 1940 was admitted in evidence. The admission of such a statement, where the maker of the statement cannot be produced as a witness, is expressly authorized by the Departmental rules.³ Even in the absence of a rule such a statement may be received in evidence

(3) Sec. 150.6 (i) of the Regulations of the Department of Justice, Immigration & Naturalization Service.

Exhibit "E"—(Continued.)

in an administrative proceeding. The testimony of Dawn Lovelace and the written statement of Richard Lovelace, so far as they relate to the same occurrences are in substantial accord. Only such discrepancies occur as are to be expected in testimony of participants in an event occurring several years before.

Both Richard and Dawn Lovelace have been members of the Communist Party, as was generally known. Richard Lovelace was a member from June 1932 to January 1939. He took a prominent part in various Communist Front Organizations, including the Workers Ex-Service Mens League, the International Labor Defense, and the American League against War and Fascism. He was a member of the Section Committee of the Party at Portland, Oregon, and ran for Congress on the Communist Party ticket in 1932. Dawn Lovelace was a member from May to October 1935. She wrote for the "Voice of Action," a Com- (119) munist newspaper, and was chairman of its Portland Bureau. She has contributed newspaper and feature articles to the Daily Worker, Sunday Worker, Western Worker, the New Masses, and also to such well known publications as Forum, New Republic and Common Sense.

After Richard Lovelace's retirement from the Communist Party he was active in the American Legion and was chairman of one of the committees of that organization in Portland. On an evening of the week of August 16, 1935, Bridges, accompanied by Hugh Adams, identified by the Lovelaces

Exhibit "E"—(Continued.)

as a Communist, and two other men, came to their apartment between eight and nine o'clock. Richard and Dawn Lovelace were alone at the time. Richard Lovelace in his statement said that they came seeking James A. Murphy, organizer of the Portland Section of the Communist Party. Dawn Lovelace testified that when they came they asked for Matt Meehan, but as he was not there, Murphy was sent for, and a message left for him at his apartment which was in the same building. While waiting for Murphy the time was occupied by Bridges dictating to Dawn Lovelace a report on a Maritime Conference in Washington, from which he had recently returned.

Murphy came in shortly after midnight and a discussion followed as to the contents of a telegram which Bridges proposed to send to Henry Schmidt, an officer of Bridges' local union. The telegram was to advise the longshoremen of the tactics to be pursued in order to prevent the waterfront employers from locking them out. At about 1:30 to 2:00 o'clock in the morning, the conference broke up, and Bridges left with the apparent intention of sending the telegram. The stay of Bridges in the Lovelace's house was thus four or five hours in duration.

Bridges admitted being at the Lovelace apartment, saying that he went there to obtain the services of a typist. He admitted sending a telegram as indicated, but stated it was sent to Jack Creary, an official of the union, and not to Schmidt. He denied

Exhibit "E"—(Continued.)

that he discussed the contents of the telegram at the Lovelace home that evening.

The alien offered no direct evidence to impeach the creditability of Dawn Lovelace. He attempted, however, to impugn the character and creditability of Richard Lovelace. For this purpose, he called two witnesses, Virgil MacMickle and Charles Yoeman. MacMickle testified that Lovelace's reputation for truth and veracity was bad, that he would not believe him under oath, and that during the last two years of his life, his conduct was irrational and that he was suffering from paranoia, at least to some extent, and was a drunkard. He testified to seeing certain letters purporting to have been written by Lovelace to a woman, afterwards identified as the wife of the witness Yoeman, which he described as obscene and extortionate. He advised Yoeman to exhibit them to the Postal Authorities. Yoeman testified that he showed the letters to the Postal Authorities, who advised that their transmission through the mails was not in violation of Postal Laws. Thus, according to the expressed opinion of the Postal Authorities, (121) as stated by Yoeman, they could have been neither obscene nor extortionate.⁴ Yoeman finally took the letters to Lovelace and complained about them. Lovelace told Yoeman that he didn't know the addressee was really married. No further letters were received by Yoeman's wife. As to paranoia and irrational conduct, MacMickle

(4) Federal Code, Title 28, Sections 334. and 338a.

Exhibit "E"—(Continued.)

was contradicted explicitly by Dr. F. J. M. Ernest, the neuropsychiatrist at the Portland Veterans' Hospital, who was a fellow member with Lovelace in the American Legion Post, and had several times examined Lovelace at the Veterans' Hospital where Lovelace was a patient, and where he finally died. He had had close association with Lovelace in Legion activities.

I give no credence or weight to any of the testimony of MacMickle. Indisputable evidence shows that he was not qualified to testify as a doctor, and that he falsified on his application for the practice of naturopathy in the State of Oregon, and thereafter as a member of the State Board of Naturopathic Examiners, passed upon his own application. His medical testimony is valueless. Aside from his lack of medical qualifications and his attempt to set himself up as a medical expert, his testimony as a lay witness was largely refuted by the other alien's witness, Yoeman, and would in any case be unworthy of belief.

Considering all the testimony, I reach the conclusion that Richard and Dawn Lovelace were both credible witnesses, that the attack on the credibility of Richard (122) Lovelace fails, that Bridges did discuss the form of the message to be sent to the longshoremen's union with the Communists then present, at least, two of them not being members of a trade union. This testimony is important as evidence of the conduct of Bridges in dealing with Communists, especially nontrade union members.

Exhibit "E"—(Continued.)

It shows a close association with Communists in line with other evidence as to Bridges' membership in or affiliation with the Communist Party.

H. THE MADISON SQUARE GARDEN MEETING

On December 16, 1936, Bridges addressed a mass meeting at the Madison Square Garden in New York City. The evidence as to the character and purpose of the meeting and as to the impelling reasons for Bridges' participation are in violent conflict. No account is so convincing that I can say that it is established. Under such circumstances no finding of membership in or affiliation with the Communist Party can be based on this episode or its surrounding circumstances. However, the summary of the evidence at the hearing would be incomplete if I did not give an outline of the conflicting testimony.

During the Fall and Winter of 1936-1937, the maritime unions of the West Coast, including the I. L. A. were on strike. Bridges at that time was president of the Pacific Coast District of the I. L. A., an affiliate of the A. F. of L. Some East Coast seamen's union, affiliated with the A. F. of L., were also on strike, as well as certain groups of long-shoremen who were supporting the strike independently and in defiance of their unions and the national officers of the A. F. of L. (123)

The Government contends that the Madison Square Garden Mass Meeting was held under the

Exhibit "E"—(Continued.)

auspices of the Communist Party, and that Bridges traveled from San Francisco to New York and spoke at the meeting upon direct orders from the Politbureau of the Party. According to the Government's claim, Bridges thus demonstrated his membership in the Communist Party.

The alien, on the other hand, asserts that the meetings was under the auspices of the East Coast Strike Committee and that Bridges' attendance followed arrangements between the West Coast Strike Committee and the executive committee of Bridges' own union, in collaboration with the East Coast Strike Committee. The arrangements were made, he asserts, prior to the time when the Communist Party is claimed to have ordered him to attend. Bridges denies that the Communist Party gave him orders on this or any other occasion, or that the Communist Party paid the expenses of his trip East.

Four witnesses, in addition to Bridges himself, gave testimony relating to this episode. The first three now to be mentioned were Government witnesses; the fourth was produced by the alien.

William C. McQuiston, now living at Port Arthur, Texas, has had a turbulent career in the labor movement. He became a member of the Communist Party in 1922 and was thereafter intermittently a member until 1935. He was a charter member of the M. W. I. U. organized in 1930, and was a member of its National Bureau and National Fraction. According to McQuiston, the M. W. I. U. was dissolved in (124) 1935, pursuant to a decision of the

Exhibit "E"—(Continued.)

National Fraction and of the R. I. L. U. His bitter opposition to this action involved him in a dispute with higher officials of the Communist Party which resulted in his suspension. He has, however, cooperated with the Party since that time and has acted as an advisor, particularly in labor matters. He served as a volunteer in the Spanish Loyalist cause in Spain for fifteen months and then deserted. In August 1938, he returned to the United States. After this he became an official of the National Maritime Union (N. M. U.) but was expelled in 1939 when he walked out of the National Convention following a controversy over his credentials. Since 1939, he has been engaged in research and literary work, chiefly on the subject of Communism. He testified before the Dies committee in 1939, and has been employed by that Committee to do research. During the time of his association with the Communist Party, he was convicted of various misdemeanors in connection with labor and Communist activities of a militant nature. In 1939, he was charged with murder in Louisiana. This he called a Communist Party frame-up. He voluntarily waived extradition, was tried and acquitted. He has held many positions of prominence and confidence in labor unions and in the Communist Party. He is a man of intelligence.

Peter J. Innes is now a sergeant in the United States Army. He was never a member of the Communist Party. He was active in the 1936-1937 strike on both the East and West Coasts. He was a member of the Seamen's Defense Committee on the East

Exhibit "E"—(Continued.)

Coast in the (125) Summer of 1936.⁵ In August of that year, the Committee sent him to the West Coast.⁶ He was thereafter elected chairman of the Strike Committee of the East Coast seamen on the West Coast. He was given credentials to sit on the Pacific Coast Strike Committee. He has testified before the Dies Committee and on the witness stand showed strong bias against Communism.

Ethel Mullaney, of New York, was the manager of the Booking Department of the Madison Square Garden. As such she arranges leases and writes the contracts and takes general care of the rentals. She identified the lease for the Garden for the evening of December 14, 1936, for a meeting under the auspices of the Joint Strike Committee of Seamen,⁷ and testified that the arrangements for the lease

(5) This Committee was an aftermath of an East Coast seamen's strike in the Spring of 1936, engaged in by certain rank and file seamen. Curran described it as an "outlaw" strike.

(6) Curran testified that Innes was sent to the West Coast in August as advertising representative or "salesman" for "The Pilot," a newspaper published by the Seamen's Defense Committee. Innes testified that he was on the West Coast as representative of the Seamen's Defense Committee. Regardless of his title, Innes evidently had a position of responsibility and did represent the Seamen's Defense Committee until the strike started. It is noted that Bridges conferred with him prior to the strike in regard to strike policy. After the strike started he was given credentials to sit on the West Coast Committee.

(7) See Gov. Ex. 260; Gov. Ex. 261.

Exhibit "E"—(Continued.)

were made by David Leeds, the treasurer of the Communist Party of the District of New York. The rental of thirty-five hundred dollars was paid in advance in full when the lease was signed and delivered, by a check signed (126) by David Leeds. Her testimony is unimpeached and uncontradicted. I accept it as establishing the facts to which she testified.

Joseph Curran, called by the alien, has since 1938 been president of the N. M. U. He is one of six National Vice-Presidents of the C. I. O. In 1936-1937, he was the chairman of the East Coast Joint Strike Committee. Previous to the organization of this committee, he was chairman of the Seamen's Defense Committee, of which Innes had also been a member. On the Joint Strike Committee, McQuiston was the representative of the Marine Firemen's Union, an A. F. of L. affiliate.

The testimony of McQuiston and Innes—I need not separate them here—was to the effect that the morale of the eastern seamen was low, and the Strike Committee, and particularly its Communist Fraction, determined to get Bridges to come on to New York to give a "pep" talk. McQuiston said Bridges flatly refused. The Communist Fraction designated Tommy Rave, member of the Politbureau of the Communist Party, to get in touch with him and to tell him it was a Party decision that he come. McQuiston, from New York, called Innes on the telephone. He was reached in Bridges' office in San Francisco. McQuiston told Innes to take Bridges

Exhibit "E"—(Continued.)

to a telephone pay station and to call a certain number in New York, also a pay station, "collect." This maneuver was to escape detection. Innes did as he instructed. McQuistion, who was waiting, turned the New York end of the line over to Raye while Innes turned the San Francisco end (127) over to Bridges. McQuistion heard Raye's part of the conversation. After some argument Raye said over the telephone that it was Party orders—"The Political Bureau and Fraction have made the decision. You have to come." Raye also told Bridges to make it official by sending news of Bridges' decision over the teletype. Innes did not hear Bridges' end of the conversation, but said that after the talk was over, Bridges said to him, "It looks like I got to go to New York." On December 10, a telegram was sent on Bridges' behalf to the Strike Committee as follows:

Harry will speak at mass meeting Madison Square Garden December Fourteenth Stop Request you make immediate arrangements for round-trip airplane ticket with United Airlines and notify by telegraph Stop In addition to public mass meeting also arrange mass meetings of longshoremen in Boston and New York Stop Acknowledge receipt and keep us posted as to arrangements. ABAJCF.⁸

The story as given by Curran and Bridges is that for sometime it had been contemplated that delegations from the West Coast should go to the East

Exhibit "E"—(Continued.)

Coast to enlist support there for the West Coast Strike. The East Coast Strike was one of sympathy with the West Coast. Bridges never had any doubt about going East; the only question was as to the date, which had to be fixed to fit into his program of meetings and speeches on the West Coast. Bridges testified that early in December he had arranged meetings in other East Coast cities, except perhaps as to the dates. The trip was (128) made, according to both Bridges and Curran, in fulfillment of the previous arrangements. Bridges stated that it was on December 9 that he definitely made up his mind to go East for the December 14 meeting. The telegram quoted above appears to be the announcement of this decision. The message is inconsistent with the theory that the meetings in other East Coast ports had already been fully arranged.

There are other inconsistencies in the Bridges-Curran version which led me to conclude that their testimony was not a frank and complete disclosure of the circumstances surrounding this meeting. I allude to only a few of them. It is doubtful whether Bridges' trip East was a "delegation" visit such as was contemplated in early arrangements.⁹ Ryan, the International President of the I. L. A., had, according to Bridges, promised aid to the West Coast Strike. This aid had not been forthcoming. The program for the delegation visits included a provision that the delegation was to "contact Ryan immedi-

Exhibit "E"—(Continued.)

ately 'on arrival' in New York. Bridges reached New York December 14. He did not get in touch with Ryan for several days. He made at least one or two speeches to the workers first. The explanation by Bridges and Curran that it was necessary to go East to enlist support for the West Coast Strike is also inconsistent with Bridges' statement that at the time in question the West Coast Strike was already won. Nor is it explained why Bridges demanded and received his travel expenses from the East Coast Strike Committee when the purpose of the trip (129) was solely to benefit the West Coast, and why it was necessary to explain this to his union's District Convention in 1937. This is particularly true in view of the impoverished condition of the East Coast Strike Committee, so vividly described by Curran. There is no explanation of the source of the \$275.00 paid for Bridges' plane ticket unless the money came from the same source as the rental for the Garden, that is, the Communist Party.

As I view this part of the evidence, I find it not inconsistent with the story of the telephone message between Rave and Bridges, as given by McQuistion and Innes. It is for other reasons that I do not accept the story of the telephone message.

In addition to the bias of McQuistion and Innes and the unusual maneuver pursued in making the call, and the coincidence of finding Innes in Bridges' office, there is a circumstance, it seems to me, even more significant. Innes and McQuistion were examined before the Dies Committee on the general subject of Communism. The subject of the Madison

Exhibit "E"—(Continued.)

Square Garden meeting was included. The telephone message is of great importance as showing Communist domination of Bridges and, indirectly, of the mass meeting; and, yet, Innes made no mention of it in his testimony before the Dies Committee. The testimony of McQuistion on this hearing is not so definite as to what his evidence before the Dies Committee was, but it is a fair assumption that he, too, was silent before the Dies Committee on this crucial incident, else the record of his testimony there would have been shown at the hearing, in this proceeding. (130)

As to what happened in New York after Bridges arrived there on the afternoon of December 14, there is similar conflict between the testimony produced by the Government and by the alien. Innes describes a meeting of Communists in Bridges' hotel room on his arrival, and both he and McQuistion tell about a meeting of Communists in an ante-room at the Garden after the Mass Meeting. In the latter meeting, they say, McQuistion turned over to Leeds the money collected at the Mass Meeting for the benefit of the strikers and Leeds gave Bridges about five hundred dollars towards his expenses. This is all categorically denied by Bridges,¹⁰ who said

(10) Innes stated that in the meeting in Bridges' hotel room, Tommy Rave informed Bridges of the change in the date of the Madison Square Garden meeting from December 14 to December 16 because the "Garden" was not available on the former date, and outlined Bridges' itinerary for other meetings on the East Coast. Despite Bridges' assertion that

Exhibit "E"—(Continued.)

he got no cash money from the East Coast. Curran's testimony as to the payment for the Garden rental is wavering and wholly unreliable. He first said he knew all about it; that he had asked a man named Lawrenson to go out to get some money. Later when it came to his attention that the Communist Party had rented the Garden, he said that they only guaranteed the rental, and that a deficit for the meeting was carried on the Strike Committee's report. (133) Finally, his statement was, in substance, that he didn't know much about the rental.

All in all, I make no finding on this episode. Grounds for suspicion as to the alien's explanations are ample. Suspicions, however, do not obviate the necessity of proof. Disregarding the telephone conversation, the chain of proof breaks at the link of Bridges' knowledge of the Communist character of the meeting. As I do not credit the testimony of McQuiston and Innes, I find that neither the telephone conversation between Raye and Bridges, or the communication of Bridges with the Communists before and after the mass meeting are established.

the other meetings were all arranged before he arrived in New York, he evidently had no knowledge of this change before his arrival there. Since he spoke every night of his stay in the East, the change in date must have necessitated a change in the date of at least one of the other meetings, but Bridges does not explain how this change was accomplished on such short notice.

Exhibit "E"—(Continued.)

I. HOWARD RUSHMORE

This witness has already been considered in connection with his testimony relating to the general subject of communism.¹¹

He testified also that in July 1935, while he was on the staff of the "Young Worker," official organ of the Y. C. L., he interviewed Bridges during a Convention of the Youth Congress in New York City, after Bridges and Louis Weinstock, a member of the C. E. C. of the Community Party had spoken, at a meeting sponsored by the A. F. of L. Committee for Unemployment Insurance.¹² In the interview Bridges praised the Youth Congress¹³ and mentioned cooperation (132) which he had received on the west coast from the National Students League.¹⁴

Rushmore also testified that during the time he was associated with various Communist publications he came to know Bridges as a "sacred cow," which he described as one to whom only favorable publicity is given. On cross-examination, he identified other persons and organizations who were mentioned in the Communist papers, classifying them as to whether they were also accorded consistent favorable publicity or otherwise; the inference being that Communist

(11). See page 28, ante.

(12) A Communist-inspired and supported movement. See Gov. Ex. 135, pp. 226, 301; Gov. Ex. 164, p. 799; Tr. 2586, 6074.

(13) See page 74, ante.

(14) See page 74, ante.

Exhibit "E"—(Continued.)

organizations and leaders were the only ones who were consistently in the "sacred cow" category.

In and of itself, I do not consider this testimony of Rushmore as establishing Bridges' membership in or affiliation with the Communist Party. I do consider it as an item revealing Bridges' attitude toward Front Organizations and a program which was inaugurated and strongly supported by the Communist Party, and further as showing that Bridges aided these organizations and this program by publicly expressing his approval of them. This evidence also shows that the Communist Party and its organs supported and gave aid to Bridges by according him favorable publicity.

J. EZRA CHASE

Ezra F. Chase, a Government witness, was a member of the Communist Party from 1931 to 1934, and again from 1935 until he resigned in December 1937. During his membership he was an organizer of the (133) Communist Party and Secretary of the American League against War and Fascism, and ran for various public offices on the Communist Ticket, and was a member of the Communist Fraction in the Los Angeles Central Labor Council. He attended the Communist Party schools. His experience in Communist organizations qualified him to speak with authority as to Communist practices and policies. His in this respect is referred to elsewhere.¹⁵

In September 1937 he was a member and organizer

(15) See page 25, ante.

Exhibit "E"—(Continued.)

of the Upholsterers International Union, an A. F. of L. affiliate. Chase testified that early in September of that year he received a telephone call from Lou Barron, organizer of the Trade Union Section of the Communist Party in Los Angeles, and an instructor in the Communist Party School, who told Chase that there was to be a meeting at 1210 $\frac{1}{2}$ West Washington Boulevard on the following morning. Barron instructed him to attend the meeting and to get in contact with two other Communist members of the Upholsterer's Union, and to instruct them to attend. Barron stated to Chase that Harry Bridges was to speak at the meeting, and would outline and lay down the line to be followed in the matter of A. F. of L. Unions going over to the C. I. O. Barron also said to Chase that failure to attend the meeting would result in disciplinary action by the Control Committee of the Communist Party. Chase stated that there were about 25 or 30 people present at the meeting, ten or fifteen of whom Chase knew to be Communists, (134) and one knew Chase as a Non-Communist. Bridges' speech dealt in general with the subject which Barron had indicated. He favored the policy of carrying unions over to the C. I. O. as a whole, not "to chip off any small chunks from the membership." In the course of the remarks, Bridges took "quite a shot at the Red Baiters," saying "there was a time that when I felt that if anyone was opposed to the Communist Party that it was his privilege to so speak, but experience has taught me that those who make a practice of red-baiting are agents of the bosses

Exhibit "E"—(Continued.)

and are the enemies of true trade unionists and should be treated with distrust."

Bridges, himself, admitted speaking at this meeting. He said it was a trade union meeting called by himself through J. R. Robertson, the Southern California Regional Director of the C. I. O. He said that he had just returned from Washington and that he called a series of meetings on the Pacific Coast to report as to the discussions that he had with the National Officers of the C. I. O. and to convey his report to the local officials. Bridges said that his speech related to C. I. O. charters. He warned against charters being sought or granted for small groups, explaining that this made for disruption and destruction in the trade union movement.

The alien's counsel directed this question to Bridges: "At that meeting, or at any meeting, did you lay down or intend to lay down any policy to govern the conduct of the Party Members on the question of C. I. O. affiliation?"—to which Bridges replied, "The line we (135) laid down was to govern all members of the C. I. O. regardless of affiliation."

The alien called another witness who had attended this meeting, John S. Horn, for twenty-seven years the secretary of the Beer Drivers Union, an A. F. of L. local in Los Angeles. Horn is a member of the Unemployment Reserves Commission of the State of California. He testified that he attended the meeting as a trade-unionist and that Bridges' talk was on the subject of Trade Union Organization, that the talk dealt only in generalities, and that he was dis-

Exhibit "E"—(Continued.)

appointed in it. He added, "I thought, with due respect to the gentleman, that it was very innocuous as an organization talk and it didn't impress me enough to remain vividly in my memory."

On the cross-examination of Horn, this occurs:

Now, didn't you also tell the F. B. I. that in your opinion Bridges' speech in 1937 was tinged with Communism?

A. I think it had that phraseology.

Q. You did say that was the truth?

A. In a mild way.

Q. Was it the truth, did you tell the truth to the F. B. I. when they questioned you about that?

A. I think I did, to the best of my knowledge.

Two matters stand out as proved from the testimony of Chase, Bridges, and Horn: First, that Bridges attended this meeting, spoke about the organization of C. I. O. unions out of the membership in A. F. of L. unions, and made an attack on what is called "red (136) baiting," and second, that he laid down the line for trade unionists, whatever their affiliation.

Chase's testimony to the effect that he was directed by a leader of the Communist Party to attend the meeting as his duty as a Communist falls short of establishing membership by Bridges in the Communist Party. The policy which Bridges as a trade unionist advocated apparently ran parallel to that advocated at the time by the Communist Party itself.

I find that the testimony of Chase and Horn falls short of establishing by itself Bridges' membership

Exhibit "E"—(Continued.)

in the Communist Party. Still it has a general application in showing him sympathetic attitude towards Communists, and to be taken into consideration with other evidence on the matter of Bridges' affiliation with the Communist Party.

The alien devoted a great deal of effort in an attempt to discredit Chase and to establish that he is what is known as a labor spy. This is treated elsewhere." ¹⁶

K. SAM DINER

Sam Diner, a naturalized American citizen, now the proprietor of a ladies' apparel shop at San Rafael, California, was called as a witness by the Government.

He was for many years a member of trade unions and from 1931 to 1936 or 1937 was a member of the Communist Party. His acquaintance with Bridges antedates the 1934 strike, in which he cooperated. During and after the 1934 strike, he saw Bridges several times. The most important part of his testimony (137) relates to a Convention of the Communist Party which he states was held in Fresno on Sunday, September 23, 1934. Diner drove to Fresno on this occasion from San Francisco with a man and woman whom he identified as Sam Darcy and his wife. They registered at the Hotel Travelers in Fresno, Diner under his own name, and the others as Mr. and Mrs. Arthur Frank.¹⁷ The next morning Diner attended

(16) Page 165, post.

(17) Gov. Ex. 198.

Exhibit "E"—(Continued.)

the Convention which had been called by District No. 13. The Convention was a closed one, only members of the Communist Party were permitted to attend. The purpose of the Convention was to check up on the defects and results of the work of the Communist Party during the general strike period in July 1934. Diner acted as temporary chairman of the Trade Union Committee. Diner testified that Harry Bridges came to the Convention in the afternoon, was a member of the Trade Union Committee, and spoke before the Committee in the late afternoon on the subject of the general trade union movement, his speech being in the nature of a report. The attendance of Bridges at this closed Communist Convention, if established, would be very persuasive, if not actually conclusive, as to the membership of Bridges in the Communist Party. Bridges himself denied his attendance at any Convention in Fresno in 1934, and stated that he never attended a Communist Convention at Fresno or anywhere, at any time, and had never been in Fresno until late in 1935.

With this conflict in the evidence, it is necessary to give special attention to the credibility of the witness (138) Diner. Diner has a long history of participation in trade unionism. He was a member of the Needle Trade Workers Industrial Union, a T. U. U. L. Union, which had apparently previously been affiliated with the A. F. of L. It was disbanded late in 1934, or absorbed by the I. L. G. W. U. Prior to 1934, he had been President of the N. T. W. I. U. and had

Exhibit "E"—(Continued.)

been a director of the Communist Party Workers School.

The Headquarters of the Communist Party at 121 Haight Street were purchased by Diner in his own name, under instructions from Sam Darcy. Afterwards, Diner transferred the property to others.

On cross-examination, appeared that Diner was expelled from the Communist Party and removed from his office in his trade union in 1936 or 1937. His statement is that he had earned the ill will of the Communist Party by refusing to follow the Party line, in rejecting certain certain applicants for employment, recommended by the Party. He was removed from his position in his trade union after a hearing. The specific charge against him seems to have been that he had received \$50.00 from an employer, which he admitted. He admitted also that the act was unethical, and when the hearing took place before the committee of his union, he did not formally explain it, and even informally he did not truthfully explain it. He said that at the present hearing was the first time he had given the truthful explanation. Briefly it was this: That he had a deep friendship for Sam Darcy. He received letters from Sam Darcy from Europe, asking him to secure the (139) removal of an indictment found in California against Darcy. The witness went to a lawyer, indicated by Darcy, and was informed that this could be done for a thousand dollars. He gave the lawyer \$300.00 at the time and then went about trying to collect the balance. The \$50.00 which he received from

Exhibit "E"—(Continued.)

the employer was used toward the accomplishment of what Darey desired, although Diner's purpose in asking the employer for the money was not disclosed to the employer. He could not tell the truth about this transaction when the charge against him came before the Labor Union Committee, on account of Darey's connection with the matter. Such is the explanation which was very voluminously given.

His expulsion from the Communist Party he claimed to have been illegal, and said that he had had a talk with Earl Browder about it, and that Browder had advised him to appeal to the Central Authorities and had, in fact, offered to pay Diner the expense of a trip to the East for the appeal.

It also appeared by the testimony of Charles M. Dullea and Emma Katzer that a proceeding or action was brought against Diner under Section 701 of the California Penal Code, relating to threats to do bodily harm. In this action or proceeding, before a Justice's Court in Sonoma County, he was placed under bond of \$500.00 for six months, to keep the peace.

Diner was not an impressive witness. His story as to the Trade Union Meeting, where he was removed from officers, is not convincing. We have the fact that he made threats of bodily harm, found in the proceeding (140) under which he was bound over to keep the peace. On the other hand, there is Bridges' denial.

I reach the conclusion, looking at all the testimony

Exhibit "E"—(Continued.)

as to this episode that it is not established by the preponderant weight of evidence.

L. NATHANIEL HONIG

Nathaniel Honig is a newspaperman, now employed by the Seattle Post Intelligencer. He was a member of the Communist Party from November 1927 to November 1939. From 1927 to May 1, 1934, he was editor of the magazine "Labor Unity" in New York, which was the organ of the T. U. E. L. and T. U. U. L. and in that capacity was a member of the National Executive Board of the T. U. U. L. During this period he wrote at least two pamphlets for the Communist Party having particular reference to the Labor Movement. These pamphlets were written at the direction of the C. E. C. and were edited for that Committee by one or more of its members. With William Z. Foster then the National Secretary of the T. U. U. L. he wrote a book entitled "Industrial Unionism." On May 1, 1934 he was sent to the Soviet Union by the C. E. C. as a "referant" between the R. I. L. U. and the trade union movement in this country. After three or four months in the Soviet Union his position was changed to that of Official Representative of the American Communist Party. He returned to the United States about September 1, 1935, and worked for a short time in the New York District of the Communist Party and was then sent to San Francisco. (141)○

Exhibit "E"—(Continued.)

He became a member of the staff of the Western Worker early in 1936, first as Labor Editor, then after four or five months as Managing Editor, although he continued while Managing Editor to gather labor news. He continued on the paper until June 1937. In 1939 he severed his connection with the Party, after the announcement of the German-Russian pact of that year. He says he was also disillusioned by the opportunistic and undemocratic methods pursued by the Communist Party.

It is his testimony that for a short time before the 1936-1937 Strike, during the strike, and for some time thereafter, he attended a number of top fraction Communist meetings. These meetings during the strike were held weekly; after the strike bi-weekly. He attended in all some ten meetings before the strike ended, and six thereafter. He gave a list of persons attending the meetings and said that generally there was present a high Communist official. He named Bridges as a participant in these meetings. During the strike, the day-to-day progress and conduct of the strike were discussed and the role of the Communists in it. At some meetings after the strike, the Communist policy of carrying the Union into the C. I. O. was discussed as well as the actions of Communist members in relation thereto.

Bridges' attendance at these Communist Meetings would be convincing evidence of his membership in and affiliation with the Communist Party. The burden was on the Government to prove the

Exhibit "E"—(Continued.)

facts on which it relied by the greater weight of evidence. The alien violently (142) attacked the credibility of the witness, as relating to these meetings. I do not understand that he questions Honig's membership in the Communist Party, or the high position which he occupied. The alien offered the testimony of Ruth Givan, a fellow employee with Honig on the Seattle Post-Intelligencer, who declared that his reputation for veracity was bad, and that she would not believe him under oath. The Government itself brought out in the direct examination of Honig that he had taken a couple of books from a stand in a store in Seattle, having accompanied representatives of the store to the police station, paid for the books, and no further complaint or legal proceeding was taken against him. He explained the transaction as a mistake on the part of the store people.

Ruth Givan testified that from a window across the street, she saw Honig coming out of the store, presumably on the occasion when he said he took the books, and that he was wildly gesticulating and waving his arms. This continued until his arms were pinned by two women from the store, whom she described as store detectives. These he tried to shake off. She did not explain where he had the books, if he had them at all, when this occurred. No one other than Miss Givan was sworn by the alien as to this incident. The testimony, including Honig's own, and the fact that the Government saw fit to introduce it, raises a suspicion, at least,

Exhibit "E"—(Continued.)

that Honig was pilfering. The circumstantial evidence is not, however, conclusive, for it can be found consistent with Honig's explanation. As (143) to his reputation for veracity, the Government swore J. W. Farmer, President of the Local Union of the American Newspaper Guild, of which Honig is a member, who testified that Honig's reputation for truth and veracity was very good.

The alien calls attention to the rather sketchy character of the witness' description of what took place in the top fraction meetings; that the man against whom Bridges is said to have spoken at these meetings was his well known opponent, namely: Harry Lundeberg, that Bridges did not favor the transfer of the Longshoremen's Union to the C. I. O. until July 1937, which was after Honig severed his connection with the Western Worker, that when first interviewed by the F. B. I. Honig said that he knew nothing favorable to the Government's case against Bridges. He explained the conflict between his early statement and his testimony in the hearing by saying that an examination of the F. B. I. record convinced him that the F. B. I. was not hostile to the labor movement.

Bridges expressly denied attendance at any of these Communist Fraction Meetings and said that he never had seen Honig until Honig came into the hearing room. Likewise, Henry Schmidt, who was said by Honig to have been present at some of the top fraction meetings, denied having attended any

Exhibit "E"—(Continued.)

meetings with Honig during the 1936-1937 strike, or at any time.

When I take into consideration these conflicts and all the evidence relating to these matters, I conclude that the Government has not established by the greater weight of evidence the attendance of Harry Bridges at these Communist fraction meetings. (144)

M. THOMAS LAURENCE

Thomas Laurence, a witness for the Government, living in Los Angeles, is employed at the present time by the Red Cross as a cutter. He testified that he was a member of the Communist Party from April 1933 until the early part of 1935. He had been a member of the I. L. G. W. U. since 1932 and had been a member of the Communist fraction in that union. Laurence left the Communist Party because of loss of confidence in the leaders of the district organization. While a member, he had on many occasions ~~permitted Communist groups~~ to meet in his apartment on the first floor of the building at 1114 Bellevue Street. At some time between May 9¹⁸ and July 31, 1934, a Communist organizer whose name is not disclosed arranged with Laurence to allow his apartment to be used for a meeting of the section committee of the Party. The

(18) The testimony of Morris F. Wales indicates that the date was probably not before May 19, 1934, since that is the date on which he started getting electric service.

Exhibit "E"—(Continued.)

organizer informed Laurence that Harry Bridges was to be present at the meeting. At the same time that this meeting was being held in Laurence's apartment, Laurence, himself, attended a Communist unit meeting in the apartment of Frank Ryan on the second floor of the same building. Out of curiosity Laurence left the unit meeting and with another person went downstairs and looked through the window of his own apartment and there saw a man whom he identified as Harry Bridges seated with five or six others. At the same time he saw Lawrence Ross and Meyer Baylin, Communist (145) Party members, evidently attending the meeting with Bridges. On cross-examination Laurence said that he had never previously seen Bridges. He did, however, point him out in the courtroom. Frank Ryan, the tenant of the apartment upstairs where the unit meeting was held, was called by the Government and testified that he recalled the meeting in his own apartment and that Laurence told him privately that evening that Bridges was attending a meeting downstairs. On cross-examination he said he could not say whether the meeting downstairs was a Communist or a trade-union meeting. Bridges himself denied attending such a meeting as Laurence described. The longshoremen's strike of 1934 began May 9 and ended July 31. Bridges stated that he was not in Los Angeles during the period of the strike. His alibi testimony was corroborated to some degree by Henry Schmidt and Fred Heiner. In further attack upon the testimony

Exhibit "E"—(Continued.)

of Laurence and to show his bias, two witnesses, David Bernstein and Bernard Appel, were called by the alien. Appel testified to violent statements made by Laurence against Bridges; for example, that he, Laurence, said he would do anything in the world to get him, and would even lie to hang him. Bernstein testified that Laurence's reputation for veracity was bad and that Laurence would get red in the face and his eyes become bloodshot when he spoke of Bridges. The conduct of Laurence on the stand did not substantiate these last statements. He exhibited no particular animosity against Bridges, although he showed himself to be decidedly hostile to policies which he called Communistic and which he said Bridges supported. (146)

The evidence taken as a whole, does not justify a finding that Bridges attended this Communistic meeting in Los Angeles. Giving full weight to all the evidence, there is too much chance of mistake in identification on the part of Laurence to say that his testimony constitutes the greater weight of evidence in the face of Bridges' denials supported as stated. Error in the identification of the man whom he had never seen before would be too easy. The fact that the Communist organizer told Laurence that Bridges was to be there would be apt to influence him in making the identification. The organizer's statement itself is of little or no probative force.

I therefore find that the attendance of the alien at a Communist meeting in Los Angeles at the

Exhibit "E"—(Continued.)

place and time mentioned is not established by the greater weight of evidence.

N. MAURICE J. CANNALONGA

Maurice J. Cannalonga, a witness produced by the Government, was a seaman employed at the time that he was first called to the stand as an electrician on a steamer. He had been a member of the Communist Party from about the beginning of the year 1936 to July 1937.

Questions relating to the credibility of this witness gave occasion to the presentation of a large amount of testimony with a plethora of circumstance. It is, in my judgment, unnecessary to narrate the details, for I have come to the conclusion, upon a consideration of all the evidence, that no reliance is to be placed upon any tes- (147) timony offered by this witness. I, therefore, summarize his statements briefly. The principal evidentiary statements on his direct examination related to his participation in Communist Fraction Meetings, which Bridges also attended. One such meeting, at least, was in Seattle at the Gowman Hotel and others were in San Francisco. At one such meeting in San Francisco, both Bridges and William Schneidemann, a well-known Communist official, were present and both took part in discussion. On cross-examination, it appeared that Cannalonga had been interviewed by F. B. I. Agents more than once before testifying, and had given three statements to the officials setting forth, along with other matters,

Exhibit "E"—(Continued.)

the circumstances of the Fraction Meetings referred to. His testimony was finished on the afternoon of April 17, and he was excused as a witness.

Nineteen days later there was called as a witness for the alien Mr. Roy D. Shoemaker, an Oregon Court Stenographer and Attorney at Law. When the alien's counsel began examining him about an occurrence on May 4 in the office of Mr. William P. Lord, an attorney and notary public in Portland when in the presence of Mr. Lord and Roscoe Craycraft, Mr. Gladstein, one of Bridges' counsel, had interrogated Cannalonga, an objection was made by the Government to the reception of the evidence on the ground that contradictory statements were not admissible unless the witness making them had been previously interrogated about them and given an opportunity to explain. A long discussion took place, in the course of which alien's counsel, Mr. Gladstein, asserted that he had asked Cannalonga to return to San Francisco to (148) testify, but that he had refused. In order to accommodate the Court Stenographer, Mr. Shoemaker, and to obviate the necessity of his remaining in San Francisco until Cannalonga had been brought back and testified, I permitted Shoemaker to read his stenographic notes of the examination of Cannalonga by Mr. Gladstein in Mr. Lord's office, without prejudice to a motion to strike the evidence out. Subpoenas were issued for service upon Cannalonga, but before he could be served with them he had disappeared from Portland and his whereabouts were said to be unknown.

Exhibit "E"—(Continued.)

A few days later Roscoe Craycraft was sworn as a witness and stated, at variance with counsel's own earlier assertion, that Cannalonga had told Mr. Gladstein himself, before the examination in Mr. Lord's office took place, that he would be glad to return to San Francisco and testify further, but desired first to go to Seattle to take the matter up with some other persons who he thought would be involved in his testimony. Under the peculiar circumstances of the disappearance of Cannalonga, after his statement that he would be glad to return to San Francisco, I permitted Craycraft to testify to statements made by Cannalonga before he was examined by Mr. Gladstein in Mr. Lord's office on May 4. He testified, in substance, that Cannalonga had told him that he had sworn in part falsely at the hearing, that he had not been present at a Communist Fraction Meeting at which both Schneiderman and Bridges were present, and that he had been intimidated into making statements to the F. B. I. to such (149) effect and to swearing as he did upon the stand because of a threat by the F. B. I. agents, that he might be prosecuted on a charge of violating the Mann Act.¹⁹ Later, in the statement in Mr. Lord's office, he again asserted that at no fraction meeting attended by him had both Schneiderman and Bridges been present at the same time.

(19) Cole Jackman, for the alien, also testified that Cannalonga had told him that the F. B. I. "had the heat on him" and that he had to do pretty much as they told him.

Exhibit "E"—(Continued.)

In Mr. Lord's office, Mr. Gladstein asked the witness about the claimed intimidation by F. B. I. Agents, but it was shown that Cannalonga made no answers to questions in relation thereto.

It should be noticed that Craycraft testified that it was he who had first brought up in his conversation with Cannalonga the matter of the alleged Mann Act violation, basing it upon a rumor which he had heard upon the water front. Still later, on June 4, Cannalonga was brought back to the hearing, and then testified, in substance, that on the 3rd and 4th of May, the days when Craycraft and Mr. Gladstein were claimed to have talked to him and when the examination in Mr. Lord's office occurred, he was so drunk that he did not remember much of what occurred. On May 3rd he asserted he was celebrating his birthday. He reasserted, however, that there had been no intimidation by Government agents, and stated that there had been no violation of the Mann Act by him, and that the story in that respect was fantastic.

Bridges denied attendance at any fraction meetings. Several witnesses were sworn to show that Cannalonga (150) was not drunk on the 3rd or 4th of May.²⁰ I am forced to conclude that Cannalonga

(20) For this purpose Ray D. Shoemaker and Roscoe Craycraft were recalled. Wm. P. Lord, who administered the oath, testified to this effect; also Louis E. Young, a longshore foreman. W. A. Eigner testified for the Government that Roscoe Craycraft purchased a fifth of rum on May 3, presumably for Cannalonga.

Exhibit "E"—(Continued.)

was not so drunk on those days as to be unable to understand the questions that were put to him and the answers he gave, in the Lord examination, or as not to understand the interviews which he had with Mr. Gladstein and Craycraft. I reject entirely the alien's claim of intimidation by agents of the F. B. I. It rests solely on Craycraft's testimony of what Cannalonga said; it is wholly repudiated by Cannalonga himself.²¹ The Government agents who had taken Cannalonga's statements, Abraham Dickstein and John Madala, were sworn as witnesses. They denied explicitly the alleged intimidation and further swore that they had never heard of any possible charge against Cannalonga for violation of the Mann Act, or of any facts to justify such a charge, and that an examination by them of the records of the Department showed no such information on file. No attack upon their credibility was made by the alien. They were, in my opinion, thoroughly credible witnesses. I believe them implicitly. I cannot tell where the truth lies in any uncorroborated statement of Cannalonga. At times, in my judgment, he clearly falsified, particularly in relation to his alleged intoxication, and other events subsequent to his first appearance as (151) a witness. Under these circumstances, I find that the testimony of Cannalonga to establish Bridges' attend-

(21) Lawrence F. Shirley corroborated Cannalonga on an incidental detail.

Exhibit "E"—(Continued.)

ance at Communist Meetings and his membership in the Communist Party is without value.

O. RICHARD A. ST. CLAIR

Richard A. St. Clair, a general laborer, living in Los Angeles, California, was, according to his own testimony, a member of the Communist Party from March to December 1934, and from September or October 1935 to December 1936. In 1934, he worked as a guard at the Communist Party Headquarters at 37 Grove Street, San Francisco. The Communist Headquarters were moved from that address to 121 Haight Street in June 1935. He continued to be employed as a guard at the Haight Street Headquarters until the latter part of June 1936.

St. Clair had first seen Bridges during the Longshoremen's Strike of 1934. He testified to three occasions on which he had seen Harry Bridges at the Communist Headquarters at 121 Haight Street. On the first time, in September 1935 Bridges entered the headquarters alone and went to the office of William Schneiderman and Elmer Hanoff, officials of the Communist Party. The second occasion was in May 1936. At that time, the witness was running the rounds of the building in performance of his duties as a guard. He had access to all the rooms. In performing his services, he entered a room on the third floor and there observed seated at a table

Exhibit "E"—(Continued.)

seven men: Harry Bridges, Henry Schmidt, John Scho- (152) macker, Elmer Hanoff, William Schneiderman, Walter Lambert, and Lawrence Ross. On the table before them were papers. Seeing these men, St. Clair immediately left the room and going downstairs took a seat at the bottom of the stairway to guard them from interruption. When the men came down from the top floor, Bridges went to the office of Schneiderman, and Schmidt and Schomacker entered the office of Hanoff. From these offices Bridges came out first and left the building. A few moments later, Schmidt left and then Schomacker. When Hanoff appeared, St. Clair testified that he said to Hanoff, "There are about two guards there at this building, * * * Harry Bridges has time and again denied that he was a Communist, * * * If seeing eyes observed Harry Bridges, Henry Schmidt, and Schomacker at this building and it becomes known to the public, * * * there may be a raid on this building here and we two boys would get our heads busted open." Hanoff then said, "Bridges is all right, he is one of us." St. Clair asked, "Do you mean by that Harry Bridges is a Party Member," and Hanoff replied "Yes," and added "Keep your mouth shut, * * * Don't say anything to no one about this," and the witness added "Hell no! I won't. Hanoff, we should be proud to have a fellow like Harry Bridges in the Party." The third occasion when St. Clair saw Bridges at the Communist Headquarters was at the time of a Mass Meeting, probably in March

Exhibit "E"—(Continued.)

1936. Bridges came to the door and asked to see Walter Lambert. St. Clair told him to wait at the (153) door and then brought Lambert there to meet Bridges. Bridges and Lambert went upstairs together.

On cross-examination, the witness recounted reasons for his open opposition to the Communist Party, beginning in 1937 or 1938. He voiced his complaints against the Communist Party to everyone who would listen, including the public authorities of the State of California and officials of the United States Government.

Bridges on the stand denied having been at 121 Haight Street on any of the occasions mentioned by St. Clair, and denied that he was ever at 121 Haight Street after that became Communist Headquarters. He had previously been at this address on two occasions only, when he purchased books at the bookstand. Henry Schmidt denied that he had been present at any such meeting as St. Clair described.

St. Clair's testimony, if believed, would be persuasive as to the membership of the alien in the Communist Party in 1936. However, I am not impressed by it. The quoted conversation with Hanoff strikes me as inherently improbable. His repeated convictions for drunkenness are at least a circumstance. His deep-seated and violent bias weakens his credibility. His vanity perhaps had weight in influencing him towards the sensational. It may be significant, that as he left the witness

Exhibit "E"—(Continued.)

stand, he said, "I am surprised that it ended so soon."

The alien produced a witness, named George A. Graham, a representative of the Orange County Branch of the Associated Farmers, an organization which Graham swore was interested in combatting (154) subversive activities and opposed the closed-shop principle in trade-unionism. Graham testified that he had secured a job for St. Clair and in 1939 had taken him, by car, to the place where he was interviewed by the Immigration Officers. No impropriety is suggested by the evidence. His testimony is irrelevant.

On the entire record, I find that the presence of Bridges at the Communist Headquarters on the three occasions mentioned by St. Clair is not established by the greater weight of evidence.

P. ROBERT P. WILMOT

Robert P. Wilmot, who lives at Portland, Oregon, and who since January 1941 has been employed by "The Wood Worker," a Trade Union Magazine, was called as a witness by the Government.

He was formerly a member of the Communist Party, having joined, seemingly during the last week of 1936, under the name of W. P. Ayer, and was expelled in July 1939. He was Editor of the "Labor New Dealer," a paper published by all the trade unions in Portland, Oregon, for fourteen

Exhibit "E"—(Continued.)

months, beginning October 1, 1937. He first met Bridges during a longshoremen's meeting in Portland in October 1937.

Wilmot testified as to a number of meetings and conversations with Bridges which took place in Portland during April 1938. He was indefinite as to their dates and sequence and was somewhat self-contradictory in these respects. I point out only the more important subjects of his testimony.

1. There was a Communist fraction meeting at the New Lennox Hotel, where Bridges told a group of (155) Communists present that Joe Ring would tell them what to do. Bridges then left, and at the meeting which followed, a discussion occurred as to the advisability of removing from office Capt. E. B. O'Grady, C. I. O. Regional Director for Portland and John Brost, his assistant. Ring is said to have stated in effect that Bridges had power to remove them but wanted the decision of the fraction which he would carry out. The meeting decided against the removal of O'Grady at that time, but for the removal of Brost, and for the appointment of Wilmot in Brost's place.

2. Wilmot narrated what took place at a meeting between Bridges, Ring, and himself occurring within twenty-four hours following the fraction meeting. Wilmot then told Bridges that he did not want Brost's job and Ring said, "The kid here doesn't think we ought to fire Brost." Wilmot on cross-examination stated he was not sure that there

Exhibit "E"—(Continued.)

was such a meeting between Bridges, Ring, and himself.

3. On an occasion when Wilmot was discussing with Bridges his troubles as Editor of the Labor New Dealer, Bridges said, "We Communists must stick together; if we don't what sort of discipline will we have in our organization".

4. At one time Bridges and Wilmot were discussing certain raids, and Wilmot's "line" in connection with writing them up, and Wilmot told Bridges that he was willing to write the stories himself but did not want to publish Communist releases or quote any one as it would affect the circulation badly. Bridges expressed the opinion that the Communist Party statements should be printed in the paper. (156)

5. In a conversation which took place in the newspaper office, Bridges stated to Wilmot, "Now is the time * * * that the Communists have got to step out and get going, and they can show their face now after the Supreme Court decision in Louisiana * * * now we can shoot the works."

6. Bridges also in a talk with Wilmot told him, when asked what the policy of the New Dealer should be, that the paper "ought to get two persons across the river named Helmig and Hartung," who, according to Wilmot were leading an anti-Communist fight in Oregon.

Bridges denied being in the New Lennox Hotel Communist Fraction Meeting and asserted he was not in Portland in April 1938, stated he did not

Exhibit "E"—(Continued.)

want to remove Brost at that time and did not remove him for some time thereafter. He denied having made the statements attributed to him by Wilmot to the effect that "We Communists must stick together," and that "Now is the time that the Communists have got to step out." He said that Helmig and Hartung were engaged in disruptive union activities and did not deny that he might have had talks about the paper's policies, and gave this testimony: .

A. As I understand, the question was my position in regard to printing official Communist releases. I still say it might depend. For example, if there was a lot of trouble up there at that time, a lot of action and tie-ups, I believe that if the Communist Party happened to send in a statement saying they would do everything they could to support the particular dispute at (157) that time in behalf of the Union position, my position would be that I wouldn't have any great objection to seeing that carried in the union paper. That would be my position even now. Maybe.

Q. Have you ever taken the position that under no circumstances should any official press release or statement of the Communist Party be printed in a trade-union paper?

A. No, I haven't; not generally speaking, no.

Three witnesses called by Bridges directly im-

Exhibit "E"—(Continued.)

peached the reputation of Wilmot.²² One of these, Virgil MacMickle, I have discussed elsewhere and put no reliance on his testimony.²³ Lee A. Meyer, a State administrative officer of the Oregon W. P. A. testified from the records of that Agency that Wilmot was discharged from the W. P. A. on September 4, 1940, for "drunkenness during project working hours."

In the welter of contradiction, only in part referred to above, I find that it is not established that Bridges attended the Communist fraction meeting at the New Lennox Hotel or was present immediately before the meeting, and I find it is not established that he made the remarks beginning, "We Communists must stick together" or the remark beginning "Now is the time that the Communists have got to step out." I do find, however, that Bridges did advise with Wilmot as to the policy of the "Labor New Dealer" and showed that he was not opposed to the publication in a trade-union newspaper of Communist releases provided that they (158) were favorable to the policies being pursued by trade-unionists themselves.

This last-mentioned finding is consonant with Bridges' general sympathetic attitude toward the Communist Party and Communists and bears on the general subject of affiliation.

(22) Robert MacGregor, Thomas Imper, and Virgil MacMickle.

(23) See page 122, ante.

Exhibit "E"—(Continued.).

Q. JOHN OLIVER THOMPSON

John Oliver Thompson, produced as a witness by the Government, lives in Yonkers, N. Y. He was a member of the Communist Party from 1929 to August 1935. He testified that during the winter of 1934-35 he was employed as an elevator operator in the Communist Headquarters on 12th Street in the City of New York. He had previously received instructions to take no one but persons known to him as Communists to the ninth floor during meetings of the Central Executive Committee. One evening, when the Committee was meeting, Roy Hudson and J. Peters, two well-known Communists, entered the building with a third man. Following his instructions, John Oliver Thompson asked the third man to what floor he wanted to go, and one of the others said, "That's all right. He is with us. This is comrade Bridges." Thompson then took all three men in the elevator to the ninth floor. At the hearing, Thompson identified the alien as the man he had seen in New York.

On cross-examination, the witness said that he had been convicted of manslaughter in the second degree, in New York State, for the killing of his wife, and had served a prison sentence and was then on parole. (159)

Bridges on the witness stand testified that the incident did not occur, and that he was not in New York City between the year 1921 and July 1935, and that he had never been inside the Communist Headquarters in New York City.

Exhibit "E"—(Continued.)

I conclude that the presence of Bridges at the Communist Headquarters in New York City in the winter of 1934-35 is not established by the greater weight of evidence. In reaching this conclusion, I take into consideration the possibility of mistake inherent to the hearsay character of the introduction and the absence of a previous acquaintance. I also have considered the time which has elapsed, as bearing upon the witness' memory, and his conviction as bearing on his credibility. I also consider the denials by the alien himself. The testimony of this witness in respect to the doctrines and tactics of the Communist Party stands uncontradicted and is in line with other testimony. It is treated elsewhere.²⁴

R. AMOS FLOYD KELLEY

Amos Floyd Kelley, produced as a witness by the Government, was a hotel keeper at the Atwood Hotel in Seattle, Washington. Bridges stayed at this hotel from May 2 to May 23, 1937. Eugene Dietrich, a friend of Bridges, stayed at the hotel at the same time. Kelley expressed to Dietrich a desire to meet Bridges. Dietrich later invited Kelley to his room when Bridges was there. After the men had had some drinks, in the course of a general conversation, Dietrich said to Bridges, "Harry, you are one of the swellest guys I (160) have ever known, it it wasn't for that Commie Outfit you belong to." In reply, Bridges said, "That is all right;

(24) See page 29, ante.

Exhibit "E"—(Continued.)

you will see the time you are damned glad to belong to our outfit." Sometime later, Kelley inquired of Dietrich what Dietrich had meant by "Commie Outfit," and was informed by Dietrich that he meant a Communist group. "Didn't you know that Bridges belonged to that outfit?" To which Kelley said, "No; how would I know it?"

On cross-examination, the witness said that at the meeting at which Kelley was present Bridges and Dietrich were acting in a jolly fashion and impressed him as being very close friends: Kelley testified: "At the time I never even gave it a second thought because I had no occasion to take it serious, and I paid no attention to it."

Bridges does not deny that this conversation took place. In fact, he said that it was quite possible that it occurred, that he had on many occasions been in Dietrich's room and had drinks with him, and that Dietrich was "always wisecracking and kidding about the Communist Party." Bridges further said in substance that such a conversation would be facetious. Inasmuch as it did not impress Kelley as serious at the time, I hold it too equivocal to base a finding of membership or affiliation thereon. It is not necessary to consider certain testimony on which the alien comments as showing bias.

Exhibit "E"—(Continued.)

S. THE NORTH AMERICAN AVIATION AND THE INTERNATIONAL WOODWORKERS OF AMERICA STRIKES

On June 5, 1941, the workers at the North American Aviation plant in Los Angeles, whose designated bargaining agent was the United Automobile Workers Union (U. A. W.), a C. I. O. affiliate, went on strike despite a mediation then pending before the National Mediation Board, and despite an agreement not to strike during the progress of the mediation or for three days after the Board had made its recommendation.²⁵ Bridges was fully aware of the situation previous to the strike, having talked personally with the entire committee in charge and the officials of the Union during the I. L. W. U. Convention in Los Angeles early in April. He had kept in touch by telephone since then. He was in full sympathy with the strikers' demands, and regarded the strike as justified. He had been aware that strike action was contemplated, but did not know that the strike would be precipitated so suddenly.

On Sunday, June 8, three days after the strike was called, he talked by telephone with a union official named Connelley,²⁶ and told him "to pull in his punches and duck it and not to call that strike."

(25) Gov. Ex. 294.

(26) Connelley's exact union position is not clear. He was evidently a leader of the union at the North American plant.

Exhibit "E"—(Continued.)

The advice was given because Bridges thought the strike was going to be "smashed" by the intervention of Federal troops. At this time he gave Connelley a message to convey to the strikers at a meeting to be held Sunday afternoon: "Well, tell the fellows best wishes and good luck from me."²⁷

(162)

Richard L. Frankenstein, National Director of Aviation of the C. I. O. was a Government witness. Immediately on learning of the strike, he proceeded to Los Angeles, arriving there by plane on Friday morning, June 6. His aim was to get the strikers back to work by Monday morning, June 9. In Frankenstein's opinion the strike was Communist maneuvered and was unwarranted. He thought the demands justified, but felt they should be left for negotiation through the National Defense Mediation Board. To end the strike, he threatened the union with loss of its C. I. O. charter. He removed from office the C. I. O. officials in the local who refused to follow the policy of the C. I. O. higher officials.

The Government contends that Bridges' attitude and actions with regard to this strike are proof of his membership in and affiliation with the Communist Party, inasmuch as he here supported a

(27) Another Government witness, Foster Hailey, a reporter for the New York Times who "covered" the mass meeting on Sunday afternoon, testified that Connelley delivered the message from Bridges in these words: "Bridges sends his best wishes and pledges his full and complete support."

Exhibit "E"—(Continued.)

Communist maneuvered strike which designedly stopped production declared by the United States essential to the National Defense.

Viewing all this evidence in a light most favorable to the Government's contention, I reach the conclusion that it does not rise to the level necessary to establish Communist membership or affiliation. It is true that Bridges at this time was C. I. O. Director for the State of California and might have used his powerful influence to avert the strike or call it off earlier. It was, however, not until Monday night, June 9, that he called Philip Murray, National President of the C. I. O., on the telephone and requested his permission (163) to go to Los Angeles to settle the strike, and he at no time publicly urged the strikers to return to work. Apparently he was not interested in doing this. The only reason he gave for advising calling it off, was his belief in its ultimate failure. He tried to reach Connelley by telephone on Saturday night, but failed; he did reach him on Sunday, and then believed the strike doomed through the probable intervention of Federal troops. Bridges evidently took a view in conflict with that of other high C. I. O. officials. Immediately on hearing of the strike, they exerted the utmost efforts to stop it. Bridges on the other hand acted only when failure of the strike through Government intervention was apparent. The evidence, however, merely shows that Bridges had a sympathetic attitude toward a strike

Exhibit "E"—(Continued.)

denounced as I have shown as a Communist maneuver.

Concurrently with the North American strike in Los Angeles, there was in progress in the northwest a strike of the International Woodworkers of America, a C. I. O. union, despite certification of the controversy to the National Defense Mediation Board for mediation.

It does not appear that Bridges had any jurisdiction over the union involved. He sent a telegram to the president of the union pledging the full support of the I. L. W. U. The attitude so expressed by Bridges, while perhaps contrary to the purpose of the mediation procedure provided by the National Defense Mediation Board, is not of itself evidence of Communist affiliation. (164)

**T. LABOR SPIES AND TRADE UNION
ETHICS**

The alien devoted much effort to show that Ezra Chase had done labor spying. It was shown that he had furnished information to the Police of Los Angeles. The alien called on Captain William F. Hynes and Charles D. Catherman, officers of the Los Angeles police in charge of labor troubles to establish this. There is no evidence that such information reached the employers. I find no impropriety in the police department obtaining informa-

Exhibit "E"—(Continued.)

tion, in any legal way of the probability of future events which might call for police action.²⁸

"Questions to McQuiston as to "labor spying" produced no proof of such practice.

The alien produced evidence from which he draws the conclusion that Sam Diner violated the rules and ethics of his trade union in his relation to his wife's business as a tradesman in the garment business.

These facts even if given the full effect claimed by the alien have little or no importance. At most, they are merely circumstances to be taken into consideration in determining the weight to be given the testimony of the witnesses. No finding unfavorable to the alien is based on the testimony of either Ezra Chase or Sam Diner, although I do not base my evaluation of their testimony on the alien's contention.

I fail to discover any effect on the Government's case from this "labor spy" contention of the alien or from evidence offered by the alien in respect thereto. (165)

U. BRIDGES AS A GOOD LABOR LEADER

Bridges offered expert proof that he was a

(28) The alien also produced Jeannine Lowry, a secretary who testified that Chase had spoken in Los Angeles under the auspices of the German-American Bund.

Exhibit "E"—(Continued.)

"good" labor leader.²⁹ At the hearing he sought to justify this by pointing to the statement of the Government witness, Diner, to the effect that he, Diner, stated from his own experience that one could not be a Communist and a good labor leader. The alien's argument in this respect would fall into this syllogistic form—A good labor leader cannot be a Communist—Bridges was a good labor leader—Therefore Bridges could not be a Communist.

The difficulty in applying such reasoning lies in the word "good." If recognition is given to the policy of hypocrisy and deceit as a Communist doctrine, the assessment of "goodness" objectively becomes impossible. Under the Communist plan of boring from within, it becomes necessary, of course, for a Communist becoming a labor leader to strive

(29) Witnesses who testified in effect that Bridges is, in their experience with him, a good labor leader were: Sam Kagel and H. P. Melnikow, associate and director respectively of the Pacific Coast Labor Bureau which has often represented unions in which Bridges was interested in arbitration proceedings. Wayne L. Morse, Dean of the University of Oregon Law School, who has been arbitrator in a large number of arbitration proceedings in which Bridges' union was interested and in which Bridges took part, and Fred Heiner, a shipping clerk for the Waterfront Employers Association, who was previously a longshoreman and a close associate of Bridges since about 1923. Another witness, Benjamin E. Mallary, a member of the State of California, testified that Bridges' reputation for truth and veracity among the members of the California Personnel Management Association is excellent.

Exhibit "E"—(Continued.)

to be a "good" leader in eyes of the members whatever ultimate dis- (166) rupting purposes he may cherish. Thus the argument fails entirely. The whole mass of proof as to the character of the alien as a labor leader is in my opinion without probative value. I have no doubt that Bridges' leadership was good in the eyes of his fellow unionist. He helped to establish better employment and working conditions as a result of the 1934 strike. He undoubtedly greatly aided the maritime workers in securing higher wages. He is entitled to credit in these respects. He may well have shown good judgment and even wisdom in negotiations and in determining for or against strikes or mediation or arbitration. On the other hand, it is to be noted that in 1937 he worked against his superiors in the A. F. of L. and he and his union were expelled therefor. He favored strikes disapproved by his A. F. of L. superiors. Even while a high official of the C. I. O. he sent encouraging messages to men engaged in a strike disapproved by the C. I. O. National leaders.

However, the Government does not attack his character as a labor leader. Bridges himself says a Communist, in his opinion, can be a good labor man. He held membership in the Communist Party mere politics and as such gave no attention to a man's Communistic affiliation. He is shown to have been consistently opposed to discrimination against an individual for his Communist connections. Here the

Exhibit "E"—(Continued.)

alien himself repudiates the syllogistic argument above mentioned.

There is another and deeper meaning of the word "good." If, as already shown the Communists in favoring the entry of their members to trade unions, do (167) so far the ulterior purpose of gaining control of the unions for a forcible and violent conflict to bring about in proper season the overthrow of the Government, and the Dictatorship of the Proletariat, then, however "good" the leadership of the Communist in the trade union movement may be from the position of the trade union members, the Communist is still a menace and it is for such reason doubtless that the legislation was enacted upon which this proceeding is brought.

The question of goodness or badness in this latter respect does not find a necessary answer in the public action of the individual in trade union movements. The evidence of goodness as testified to by the alien's witnesses does not meet the point. It lies deeper. It is to be resolved only by a determination of the alien's unavowed purposes, best discoverable in Communist membership.

V. ATTITUDE OF BRIDGES TOWARD THE COMMUNIST PARTY, ITS POLICIES AND ITS AFFILIATED ORGANIZATIONS

In the foregoing summary, instances were noted and reviewed, which in my judgment, demonstrated a sympathetic or cooperative attitude on the part of the alien toward the Communist Party, the Ma-

Exhibit "E"—(Continued.)

rine Workers Industrial Union and other Communist organizations. The alien, in fact, admitted a certain amount of cooperation, but sought to justify his conduct upon the ground that it was expedient or good trade union practice. Other instances show a cooperative and sympathetic attitude toward various Front Organizations of the Communist Party and (168) toward certain Communist-sponsored programs and policies. There is also evidence that he cooperated with known members of the Communist Party and affiliated organizations, and very often shared their views, upon political, social, and, particularly, labor questions.

Viewed as isolated instances, I did not consider such items of evidence as establishing the alien's membership in or affiliation with the Communist Party or its subsidiary organizations. In my judgment, however, these instances viewed as a whole form a pattern which is more consistent with the conclusion that the alien followed this course of conduct as an affiliate of the Communist Party, rather than as a matter of chance coincidence. In this respect, I do not rely upon any single incident, but rather upon a course of conduct extending from the year 1932 and comprising a large number of instances where the views and conduct of the alien were not only strikingly similar, but were actually the same as the conduct and views espoused by the Communist Party.

This conclusion is strengthened by the alien's expressed attitude with regard to the place of Com-

Exhibit "E"—(Continued.)

munists in the labor unions. He has consistently favored nondiscrimination against union men because of Communist membership and excoriated "Red baiters" as he called those who took an opposite view. At a time when unions were fighting the infiltration of Communists into the labor movement in general, the Communist Party, as heretofore pointed out,³⁰ was pursuing a policy of penetration into the labor unions against the will of the unions and their leaders. Bridges' position of nondiscrimination actually amounted to cooperation with the Communist Party in carrying out its program of penetration and boring from within.

In consistently attacking those who opposed the absorption of Communists into the unions as Red Baiters his view was that the cry of Communism was a tool of the "reactionary labor leaders" to destroy the labor organizations. It appears, however, that he adopted this attitude with regard to all those who raised the cry of Communism without discrimination as to whether the anti-Communist movement in the particular instance was sincere or otherwise.

Bridges' unswerving attitude of nondiscrimination and his uniform condemnation of Red Baiters is strongly corroborative of the finding of membership or affiliation made on an analysis of particular episodes.

(30) See page 46 et seq., ante.

Exhibit "E"—(Continued.)

SECTION III. BRIDGES' MEMBERSHIP IN
"THE INDUSTRIAL WORKERS OF THE
WORLD IN 1921 AS A GROUND FOR DE-
PORTATION

The "Industrial Workers of the World" (I. W. W.) is an association founded in 1906, having as its purpose the organization of the workers to secure the abolition of capitalism and of the wage system. The aims of the I. W. W. are thus stated in its preamble: "It is the historic mission of the working class to do away with capitalism. The army of production must be organized, not only for the every-day struggle with (170) capitalists, but also to carry on production when capitalism shall have been overthrown. By organizing industrially, we are forming the structure of the new system within the shell of the old."

The Government does not contend that the I. W. W. advocates the overthrow of the Government of the United States by force and violence. It could not well do so, in the face of the decision of the United States Supreme Court, *Fiske v. Kansas*, 274 U. S. 380. Under that decision the Government cannot successfully contend that the preamble of the I. W. W. shows an advocacy of the unlawful destruction of property or sabotage. The Government grounds its case in respect to the character of the I. W. W. upon certain documents introduced in evidence.

The warrant upon which Bridges was arrested

Exhibit "E"—(Continued.)

did not charge him with membership in or affiliation with any organizations or groups, except those which advocated the overthrow of our Government by force and violence. During the course of the hearing, however, the warrant was amended by inserting a charge that the alien had been, since his arrival in this country, a member of or affiliated with an organization, association, society, or group that advised, advocated, and taught the unlawful damage, injury, and destruction of property and sabotage, and that while in the United States he became a member of an organization, association, society, or group that circulated and distributed written or printed matter, advising, advocating, or teaching the unlawful damage, injury, or destruction of property and sabotage. The only organization suggested by the Government to fall within the description of the amendment is the I. W. W. During the year following Bridges' entry into the United States, he became a member of the I. W. W.; the time of his joining is given by him as June or July 1921. He retained his membership six or seven months. He was familiar with the I. W. W. movement in Australia before coming to the United States. He knew of the character of the I. W. W. when he arrived, and said to him it was a trade-union, a little better than those he had seen around.

The question presented is whether the I. W. W. during the time of Bridges' membership falls within the description of organizations given in the stat-

Exhibit "E"—(Continued.)

ute, that is, (1) those advocating the unlawful damage, injury, or destruction of property or, (2) those advocating sabotage or, (3) those distributing printed matter advocating such purposes. The documents offered by the Government, other than the membership book, containing the preamble referred to, are four in number:

The I. W. W., Its History, Structure, and Methods, by Vincent St. John, revised 1917.

Sabotage, its History, Philosophy, and Function, by Walker C. Smith, bearing no date of publication.

The Revolutionary I. W. W., by Grover H. Perry, bearing a publication date of July 1916.

I. W. W. Songs to Fan the Flames of Discontent, by Joe Hill, bearing publication date Feb. 1917.

To identify these documents and establish that they represented in their contents principles advocated by (172) the I. W. W. and that the documents were themselves circulated by the I. W. W., the Government produced as a witness, Algia E. Reese, who was a member of the society from 1918 to 1920. He ceased to be a member of the organization at least six months before the alien joined it. Reese testified that these documents were distributed in the Locals which he visited during the time he was a member and represented the doctrines advocated by the society.

McQuistion, a witness elsewhere considered.³¹

(31) See p. 127, ante.

Exhibit "E"—(Continued.)

swore that he had been a member of the I. W. W. from 1919 to 1924. On being shown a copy of the pamphlet by St. John on the "History, Structure, and Methods of the I. W. W.," he said he had read the book while he was a member of the I. W. W., that the book stated the principles of the I. W. W. at that time. He further testified, however, that it came out in different editions, and he did not know which edition he read. He did testify that St. John was recognized, and still is, as the leading theoretician of the I. W. W. In explanation of his indefiniteness, McQuiston testified that he was never very active in the I. W. W. but was largely working for the Communists, more than the I. W. W., for the wrecking of the organization or to take it over.

The alien produced Claude Erwin as a witness. At one time, he had been a member of the General Executive Board of the organization. He was on the District Organization Committee for California in 1919 and served on that Committee until he became District (173) Secretary in 1920. Since then he has been an organizer and still carries an organizer's credentials. Erwin identified a resolution of the General Executive Board, published May 4, 1918, officially disavowing belief in or advocacy of destruction of property or violence. He identified the minutes of the General Executive Committee published Sept. 4, 1920, showing the adoption of a resolution instructing all branches

Exhibit "E"—(Continued.)

to destroy the pamphlet "Sabotage" by Flynn and Smith. He further testified that the Government Exhibit of the history of the I. W. W. by Vincent St. John was not in circulation in 1921, and that a revised edition had been published in 1919, in which the language particularly relied upon by the Government as showing advocacy of illegal destruction of property and sabotage had been excised. According to this witness, Perry's book on the Revolutionary I. W. W. was not distributed in 1921, it being then out of print. Erwin testified explicitly that the I. W. W. never advocated sabotage through these pamphlets and never went on record endorsing the action discussed in these pamphlets. Erwin's credentials since 1920 contained the following: "The I. W. W. in none of its doctrines in the past or present has ever advocated the destruction of life or property, but has, in fact, always strenuously opposed such teachings, methods and tactics. Furthermore, it is against the principles of the Industrial Workers of the World to destroy anything in any way, shape or form."

There are pages in the exhibits introduced advocating the destruction of property and sabotage, and if (174) the Song Book is to be taken seriously it corroborates such advocacy. In itself the Song Book is, at best, tenuous proof. There is thus no direct proof that the documents in evidence, other than the song book were circulated while Bridges was a member, though there is proof of

Exhibit "E"—(Continued.)

earlier circulation and discontinuance according to Erwin before Bridges joined.

Viewing the evidence as a whole, I am unable to find that it is established by the greater weight of evidence that the I. W. W. during the period of Bridges' membership advocated or circulated documents advocating the illegal destruction or injury of property.

Bridges' explanation of his withdrawal of his membership in the society may have some significance. He testified that he withdrew because he became convinced that he was not in accord with the principles of the society, that he found it anarchistic and syndicalistic.³² (175)

(32) In the 1939 hearing, Bridges stated his understanding of the I. W. W. at that time in the following terms:

Q. Do you know what the aims and purposes of the I. W. W. were at that time?

A. I wasn't very familiar with them. When I found out what they were I got out of it fast.

Q. How long were you in?

A. For a period of a few months, I think. I wasn't a very good member. It did not agree with my views.

Q. I think you said awhile ago that you had been a member of the I. W. W. or Industrial Workers of the World, for a short period.

A. Right.

Q. Do you know anything about the aims and purposes of that organization at that time?

A. Well, I knew at that time, and not to any great extent. I found out after I was in a short while. I know what they are now. I disagreed with them.

Q. Would you tell us what you thought the aims

Exhibit "E"—(Continued.)

"Syndicalistic" is a word of somewhat uncertain content, "criminal syndicalism" used in certain penal statutes is defined in them as the destruction or injury of personal property under certain circumstances. Syndicalism in a broad sense may be defined as the doctrine favoring the taking over of industry and the instruments of production by the workers so as to bring about an industrial Government. The accomplishment of it, as advocated by the I. W. W., is to be by economic rather than by political action.

The word "sabotage" as used in the statute is also of uncertain meaning. Sometimes it is defined as the unlawful damage, injury, or destruction of property,³³ or wilful and malicious physical damage or injury to physical property.³⁴ It is to be noted, however, that in the statute upon which the

were at the time you joined it, and what you know now about it?

A. Well, their aims are syndicalistic, I think. They are more or less an Anarchist group. In other words, they prate and carry on under a program of the extreme rank and file-ism, and all they succeed in doing is creating a lot of general disruption and bogging down the advance of labor generally under a cloak or a guise of democracy.

I believe they are disruptive. I don't like their program. * * * Tr. pp. 2534-2535.

(33) Ex parte Morse, 38 Idaho 506. The Idaho statute now in effect defines "sabotage" very broadly.

(34) Burns v. United States, 274 U. S. 328.

Exhibit "E"—(Continued.)

alien's deportation is sought, the word "sabotage" is set apart from the preceding words, "the unlawful damage, injury or destruction of property." It seems, therefore, that "sabotage" as used in the statute is a word of broader (176) content than that contained in the phrase "unlawful damage, injury, or destruction of property." Some definitions are given in the opinion in *Burns v. United States*, 274 U. S. 328, at 338. In the pamphlet on "Sabotage" by Walter C. Smith, already referred to, the following occurs: "Sabotage may mean the direct destruction of property. Again, it may mean indirect destruction through organized inefficiency," page 21.

I am inclined to the view that the word "sabotage" as used in the statute before us would include such direct action as cripples the instrumentalities of production whether property is actually damaged, injured, or destroyed or not. The difficulty here is that there is a failure to prove by a fair preponderance of the evidence that the I. W. W. at the time of Bridges' membership in it favored and advocated, or published or circulated pamphlets or written or printed matter advocating or advising such acts as would constitute sabotage even under the broad definition suggested.

My conclusion is that it was not established by the greater weight of evidence that the I. W. W. at the time Bridges was a member of an organization falling within the purview of the statute in the particulars I have discussed.

Exhibit "E"—(Continued.)

SECTION IV. PROPOSED FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
ORDER

Pursuant to the regulations governing this proceeding, I make the following proposed findings of fact, conclusions of law and order. (177)

Proposed Findings of Fact

1. That Harry Renton Bridges is an alien, to wit, a native and citizen of Australia;

2. That said alien entered the United States at the port of San Francisco, California, April 12, 1920, as a member of the crew of the barkentine Ysabel;

3. That the Communist Party of the U. S. A., from the time of its inception in 1919 to the present time, is an organization that believes in, advises, advocates, and teaches the overthrow by force and violence of the Government of the United States;

4. That the Communist Party of the U. S. A., from the time of its inception to the present time, is an organization that writes, circulates, distributes, prints, publishes, and displays printed matter advising, advocating, or teaching the overthrow by force and violence of the Government of the United States;

5. That the Communist Party of the U. S. A., from the time of its inception to the present time, is an organization that causes to be written, circulated, distributed, printed, published, and dis-

Exhibit "E"—(Continued.)

played printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States;

6. That the Communist Party of the U. S. A., from the time of its inception to the present time, is an organization that has in its possession for the purpose of circulation, distribution, publication, issue and display, printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States; (178)

7. That the Marine Workers' Industrial Union was a part of the Communist Party, dominated and controlled by it;

8. That the Marine Workers' Industrial Union was an organization that believed in, advised, advocated and taught the overthrow by force and violence of the Government of the United States;

9. That after entering the United States the alien has been a member of the Communist Party;

10. That after entering the United States the alien has been affiliated with the Communist Party;

11. That after entering the United States the alien has been affiliated with the Marine Workers' Industrial Union.

Proposed Conclusions of Law

That under the Act of October 16, 1918, as amended by the Acts of June 5, 1920, and June 28, 1940, the alien, Harry Renton Bridges, is subject to deportation in that:

Exhibit "E"—(Continued.)

1. After entering the United States he has been a member of an organization, association, society or group that believes in, advises, advocates, and teaches the overthrow by force and violence of the Government of the United States;

2. That after entering the United States the alien has been affiliated with an organization, association, society or group that believes in, advises, advocates, and teaches the overthrow by force and violence of the Government of the United States;

3. That after entering the United States the alien has been a member of an organization, association, (179) society, or group that writes, circulates, distributes, publishes, and displays printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States;

4. That after entering the United States the alien has been affiliated with an organization, association, society, or group that writes, circulates, distributes, publishes, and displays printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States;

5. That after entering the United States the alien has been a member of an organization, association, society, or group that caused to be written, circulated, distributed, published, printed, and displayed, printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States.

Exhibit "E"—(Continued.)

Proposed Order

That the alien, Harry Renton Bridges, be deported to Australia at the expense of the Government on the charges that:

1. After entering the United States he has been a member of an organization, association, society, or group that believes in, advises, advocates, and teaches the overthrow by force and violence of the Government of the United States;

2. After entering the United States he has been affiliated with an organization, association, society, or group that believes in, advises, advocates, and teaches the overthrow by force and violence of the Government of the United States; (180)

3. After entering the United States he has been a member of an organization, association, society, or group that writes, circulates, distributes, publishes, and displays printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States;

4. After entering the United States he has been affiliated with an organization, association, society, or group that writes, circulates, distributes, publishes, and displays printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States;

5. After entering the United States he has been a member of an organization, association, society, or group that caused to be written, circulated, distributed, published, printed, and displayed printed matter advising, advocating, and teaching the over-

Exhibit "E"—(Continued.)

throw by force and violence of the Government of the United States.

CHARLES B. SEARS,
Presiding Inspector. (181)

APPENDIX

Immigration and Naturalization Service,
Department of Justice

File No. 55973/217

In the Matter of Harry Renton Bridges

Memorandum of Decision of Motion in
Relation to Wiretapping

On September 2, 1941, Harry Renton Bridges, the alien, noticed a motion before me as Presiding Inspector for an order "directing a hearing for the examination of witnesses." According to an amended notice of motion, the subject of the examination sought was: (a) The use of wiretapping in connection with the preparation or presentation of evidence in connection with the 1941 hearings against Harry R. Bridges, and (b) The use made either directly or indirectly of intercepted telephone messages and facts ascertained as a result of such wiretapping. The notice also included a demand that an order direct any evidence secured from any intercepted telephone message or messages, or based either directly or indirectly upon such intercepted message or messages, be stricken

Exhibit "E"—(Continued.)

from the transcript of the hearings. To support this motion there were presented affidavits as follows: (182)

Of Harry Bridges, verified August 29, 1941;

Of Leon Goodelman, verified August 28, 1941;

Of Lawrence Kammet, verified September 2, 1941, and

Of Carol King, verified September 2, 1941.

The motion was argued before me, in Washington, on September 19, 1941. On the argument of the motion, the alien presented a further affidavit of Carol King, verified September 18, 1941, which was added to the motion papers with the consent of Government Counsel. The Government filed a response to the motion, asserting, (1) The insufficiency of the moving papers as failing to disclose facts showing any interception of telephone messages prior to or during the hearing in this proceeding, and (2) the insufficiency of the moving papers as failing to show that any evidence, information, or facts involved in the hearing were obtained directly, or indirectly, by the intercepting of any telephone messages. The response contained a second paragraph to the effect that if the Presiding Inspector did not sustain the Government's contention and deny the motion, the United States reserved its right to deny by affidavit or otherwise that there was any interception of telephone messages prior to, during, or in connection

Exhibit "E"—(Continued.)

with this proceeding and to deny that any evidence, information, or facts were obtained in this proceeding, directly or indirectly, by interception of telephone messages.

To understand the motion, it is not necessary to detail the facts contained in the original affidavits. Suffice it to say that there is enough in them to show that telephone wires in the room of Harry Bridges in the Edison Hotel in New York City, having interstate connections, were tapped by agents of the Federal Bureau of Investigation from August 5, 1941, to August 22, 1941, so that communications by telephone were intercepted and heard by agents of the F. B. I. The affidavits show a violation of Section 605 of the Federal Communications Act (47 U. S. C. Section 605), during the period mentioned.

Evidence obtained directly or indirectly by such procedure, by Government Agents, cannot be received in the United States Courts of Justice; *Nardone v. United States*, 308 U. S. 338; *Nardone v. United States*, 302 U. S. 379; *Olmstead v. United States*, 277 U. S. 438. The same rule should, in my opinion, be applied in administrative proceedings such as this. The rule of procedure upon which the alien relies is stated thus, in the opinion of Mr. Justice Frankfurter in *Nardone v. United States*, 308 U. S. 338, 341, "The burden is, of course, on the accused in the first instance to prove to the trial court's satisfaction that wire tapping was unlawfully employed. Once that is established

Exhibit "E"—(Continued.)

* * * the trial judge must give opportunity, however closely confined, to the accused to prove that a substantial portion of the case against him was a fruit of the poisonous tree."

The hearing in this case was closed on June 12, 1941, and the evidence was then complete. More than a month and a half elapsed before wiretapping occurred.

It is self-evident that the wiretapping referred to as occurring in August could have had no relation to evidence offered or received at the preceding hearing. The procedural rule above quoted cannot refer to wiretapping in vacuo. It must be confined to wiretapping from which evidence for the trial or hearing was, at least, obtainable, else there could be no investigation in respect to evidence obtained by its use. The mere showing of subsequent violation of the Communications Law does not warrant an investigation. (184)

Claim was made on the argument that the wiretapping by agents of the F. B. I., in violation of the statute, occurring subsequent to the hearing was sufficient to prove circumstantially that wiretapping occurred before. I reject this contention. The existence of such wrongdoing cannot be established by other wrongdoing of a similar nature. We know, of course, that the F. B. I. made an investigation of this case before the hearing began. No person taking part in that investigation is shown to have been involved in the wiretapping referred to in the affidavits. Even that circum-

Exhibit "E"—(Continued.)

stance would in my judgment not be enough. The alien in the affidavits submitted has failed completely to establish a prima facie case that any wiretapping occurred, except after the hearing was closed.

The alien also asks for an examination to determine the very fact upon which he has the burden of proof, the existence of preceding interception of communications by tapping wires. Founded only on suspicion, this request is for a mere fishing excursion, for which I find no warrant either in the authorities or in reason. The alien's suspicion cannot sustain the burden of proving facts.

Carol King, in her supplementary affidavit, charges a conspiracy of four named Government officials in the Immigration and Naturalization Service, and catalogues many acts which she asserts were committed pursuant to the conspiracy. The affiant can have no personal knowledge of any of the acts stated. There is no statement of the sources of her information. It is a list of accusations without more and adds nothing to the original affidavits.

For these reasons, I deny the motion.

Dated: Buffalo, N. Y., September 25, 1941.

CHARLES B. SEARS,

Presiding Inspector. (185)

Exhibit "E"—(Continued.)

INDEX OF WITNESSES

Government:	Page	Government—Continued	Page
Barlow, Lee	118	Wilmot, Robert P.	155
Black, Daniel	95	Allen:	
Cannalunga, Maurice J.	147	Appel, Bernard	146
Chase, Ezra	133	Bernstein, David	146
Diner, Sam	137	Bridges, Harry R.	82
Eigner, W. A.	151	Catherman, Charles	165
Ernest, F. J. M.	122	Craycraft, Rosco	148
Farmer, J. W.	144	Curran, Joseph	127
Frankenstein, Richard T.	163	Dullea, Charles W.	140
Gitlow, Benjamin	53	Erwin, Claude	173
Hailey, Foster	162	Givan, Ruth E.	143
Honig, Nathaniel	141	Graham, George A.	154
Innes, Peter	125	Heiner, Fred	146, 166
Kelley, Amos F.	160	Horn, John S.	136
Laurence, Thomas	145	Hynes, William F.	165
Love, Ace, Richard and Dawn	119	Imper, Thomas	158
Lundeberg, Harry	104	Jackman, Cole	150
Madala, John L.	151	Kagel, Sam	166
Mullaney, Ethel	126	Katzer, Emma	140
McQuiston, William C.	124	Lord, William P.	148
O'Neill, James T.	107	Lowry, Jeannine	165
Reese, Algia E.	173	MacGregor, Robert	158
Rushmore, Howard	132	MacMickle, Virgil	158
Ryan, Frank	145	Mallary, Benjamin E.	166
Schoffield, Lemuel D.	61	Melnikow, H. P.	166
Schnering, Farrell	25	Meyer, Lee A.	158
Segerstrom, Gertrude	115	Morse, Wayne L.	166
Shirley, Lawrence F.	151	Schmidt, Henry	144
St. Clair, Richard A.	152	Shoemaker, Roy D.	148
Thompson, John O.	159	Wales, Morris F.	145
Van Syckle, George B.	95	Yoeman, Charles	121
		Young, Louis E.	151

Exhibit "E"—(Continued.)

INDEX TO ABBREVIATIONS

A. F. of L.....	American Federation of Labor.
C. E. C.....	Central Executive Committee of the Communist Party of the United States.
Comintern.....	Communist International.
C. I. O.....	Congress of Industrial Organizations.
E. C. C. I.....	Executive Committee of the Communist Interna- tional.
F. B. I.....	Federal Bureau of Investigation.
I. L. A.....	International Longshoremen's Association.
I. L. D.....	International Labor Defense.
I. L. W. U.....	International Longshoremen's and Warehouse- men's Union.
I. R. A. (Mopr.).....	International Red Aid.
I. S. U.....	International Seamen's Union.
I. W. W.....	Industrial Workers of the World.
M. W. I. U.....	Marine Workers Industrial Union.
Polcom.....	Political Committee or Political Bureau of the Central Executive Committee of the Com- munist Party of the U. S. A.
Politburo.....	
Politbureau.....	
R. I. L. U. (Prof- intern).....	Red International of Labor Unions.
S. U. P.....	Sailors Union of the Pacific.
T. U. E. L.....	Trade Union Educational League.
T. U. U. L.....	Trade Union Unity League.
Y. C. L.....	Young Communist League.

[Endorsed]: Filed June 2, 1942. Walter B. Mal-
ling, Clerk. (187)

EXHIBIT "F"

Department of Justice
Immigration and Naturalization Service
Before the Board of Immigration Appeals

In the Matter of

HARRY RENTON BRIDGES

File 55973/217

EXCEPTIONS TO PROPOSED FINDINGS,
CONCLUSIONS AND ORDER

Pursuant to Section 19.7(e) of the Immigration Rules, exceptions are hereby taken on behalf of the above-named alien to the Proposed Findings, Conclusions and Order of the Presiding Inspector in the above-named case.

I

Exception is hereby taken to the following Proposed Findings of Fact:

1. That after entering the United States the alien has been a member of the Communist Party.
2. That after entering the United States the alien has been affiliated with the Communist Party.
3. That after entering the United States the alien has been affiliated with the Marine Workers' Industrial Union.
4. That the Marine Workers' Industrial Union was a part of the Communist Party, dominated and controlled by it.
5. That the Marine Workers' Industrial Union was an organization that believed in, advised, advo-

Exhibit "F"—(Continued.)

ated, and taught the overthrow by force and violence of the Government of the United States.

6. That the Communist Party of the U.S.A., from the time of its inception in 1919 to the present time, is an organization that believes in, advises, advocates, and teaches the overthrow by force and violence of the Government of the United States.

7. That the Communist Party of the U.S.A., from the time of its inception to the present time, is an organization that writes, circulates, distributes, prints, publishes, and displays printed matter advising, advocating, or teaching the overthrow by force and violence of the Government of the United States.

8. That the Communist Party of the U.S.A., from the time of its inception to the present time, is an organization that causes to be written, circulated, distributed, printed, published, and displayed printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States.

9. That the Communist Party of the U.S.A., from the time of its inception to the present time, is an organization that has in its possession for the purpose of circulation, distribution, publication, issue and display, printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States.

Exhibit "F"—(Continued.)

II

Exception is hereby taken to the failure of the Presiding Inspector to find:

1. That the evidence does not establish that the Industrial Workers of the World during any time that the alien was a member thereof, was an organization, association, society, or group which:

(a) Advised, advocated, or taught the unlawful damage, injury, or destruction of property or sabotage; or

(b) Circulated or distributed written or printed matter advising, advocating, or teaching the unlawful damage, injury, or destruction of property or sabotage.

2. That the evidence established the unlawful use of wire-tapping against the alien in connection with the 1941 hearing.

3. That the unlawful use of wire-tapping against the alien as established by the evidence warranted a hearing to investigate the extent to which such unlawful wire-tapping was used in the preparation or presentation of the 1941 hearing.

4. That the facts set out in the applications for subpoenas and subpoenas duces tecum on Frances Perkins, Gerald D. Reilly and Lemuel Schofield were, if true, sufficient to establish that the alien was denied the equal protection of the laws.

5. That with the exception of the issue involving membership in the Industrial Workers of the World, the alien has been once in jeopardy in

Exhibit "F"—(Continued.)

the first hearing on the same issues which are involved in the second hearing.

6. That with the exception of the issue involving membership in the Industrial Workers of the World, the issues of the second hearing are identical with the issues involved in the first hearing.

7. That the alien was not given sufficient notice, prior to the hearing, of the nature of the evidence upon which the warrant issued.

8. That the requests of alien during the hearing for examination of written statements made by Government witnesses prior to their testifying were sufficient in form and content, and stated good cause for the granting of such requests.

9. That the evidence does not establish that the alien had knowledge that the Communist Party of the U.S.A. at any time was an organization, association, society or group that:

(a) Did or does believe in, advise, advocate, or teach; or

(b) Did or does write, circulate, distribute, print, publish, or display printed matter advising, advocating, or teaching; or

(c) Did or does cause to be written, circulated, distributed, printed, published, or displayed printed matter advising, advocating, or teaching; or

(d) Has or had in its possession for the purpose of circulation, distribution, publication,

Exhibit "F"—(Continued.)

issue, or display, printed matter advising, advocating, or teaching

the overthrow by force or violence of the Government of the United States.

10-11: That the evidence does not establish that the alien at any time:

(a) Did or does believe in, advise, advocate, or teach; or

(b) Did or does write, circulate, distribute, print, publish, or display printed matter advising, advocating, or teaching; or

(c) Did or does cause to be written, circulated, distributed, printed, published or displayed printed matter advising, advocating, or teaching; or

(d) Has or had in his possession for the purpose of circulation, distribution, publication, issue or display printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States.

12. That the evidence does not establish that the alien at any time had knowledge that the Marine Workers' Industrial Union was a part of the Communist Party, or dominated or controlled by it.

13. That the evidence does not establish that the alien had knowledge that the Marine Workers' Industrial Union at any time was an organization, association, society or group that:

(a) Did or does believe in, advise, advocate,

Exhibit "F"—(Continued.)

or teach the overthrow by force or violence of the Government of the United States; or

(b) Did or does write, circulate, distribute, print, publish, or display printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States; or

(c) Did or does cause to be written, circulated, distributed, printed, published, or displayed printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States; or

(d) Has or had in its possession for the purpose of circulation, distribution, publication, issue or display printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States.

14. That the evidence does not establish that the Communist Party of the U.S.A. at any time was or is an organization that:

(a) Did or does believe in, advise, advocate, or teach the overthrow by force or violence of the Government of the United States, within the meaning of 8 USC, Section 137 as amended; or

(b) Did or does write, circulate, distribute, print, publish, or display printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the

Exhibit "F"—(Continued.)

United States, within the meaning of 8 USC, Section 137 as amended; or

(c) Did or does cause to be written, circulated, distributed, printed, published, or displayed printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States, within the meaning of 8 USC, Section 137 as amended; or

(d) Has or had in its possession for the purpose of circulation, distribution, publication, issue, or display any printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States, within the meaning of 8 USC, Section 137 as amended.

15. That the evidence does not establish that the Marine Workers' Industrial Union was a part of the Communist Party, or dominated or controlled by it, within the meaning of 8 USC, Section 137 as amended.

16. That the evidence does not establish that the Marine Workers' Industrial Union at any time was an organization, association, society, or group that:

(a) Did or does believe in, advise, advocate, or teach the overthrow by force or violence of the Government of the United States, within the meaning of 8 USC, Section 137 as amended; or

Exhibit "F"—(Continued.)

(b) Did or does write, circulate, distribute, print, publish, or display printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States, within the meaning of 8 USC, Section 137 as amended; or

(c) Did or does cause to be written, circulated, distributed, printed, published, or displayed printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States, within the meaning of 8 USC, Section 137 as amended; or

(d) Has or had in its possession for the purpose of circulation, distribution, publication, issue, or display any printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States, within the meaning of 8 USC, Section 137 as amended.

17. That the evidence does not establish that the alien at any time has been a member of or affiliated with any organization, association, society, or group that:

(a) Did or does believe in, advise, advocate, or teach the overthrow by force or violence of the Government of the United States, within the meaning of 8 USC, Section 137 as amended; or

(b) Did or does write, circulate, distribute,

Exhibit "F"—(Continued.)

print, publish, or display any printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States, within the meaning of 8 USC, Section 137 as amended; or

(c) Did or does cause to be written, circulated; distributed, printed, published, or displayed any printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States, within the meaning of 8 USC, Section 137 as amended; or

(d) Had or has in its possession for the purpose of circulation, distribution, publication, issue, or display any printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States, within the meaning of 8 USC, Section 137 as amended.

18. That the evidence does not establish that the alien at any time has been a member of or affiliated with any organization, association, society, or group which was a part of, or dominated or controlled by, or affiliated with, any organization, association, society, or group that, within the meaning of 8 USC, Section 137 as amended:

(a) Did or does believe in, advise, advocate, or teach the overthrow by force or violence of the Government of the United States; or

(b) Did or does write, circulate, distribute,

Exhibit "F"—(Continued.)

print, publish, or display printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States; or

(c) Did or does cause to be written, circulated, distributed, printed, published, or displayed printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States; or

(d) Has or had in its possession for the purpose of circulation, distribution, publication, issue, or display any printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States.

9. That the evidence does not establish that the alien at any time has been a member of or affiliated with the Communist Party of the U.S.A.

20. That the evidence does not establish that the alien at any time has been a member of or affiliated with the Marine Workers' Industrial Union.

III

Exception is hereby taken⁵ to the Proposed Conclusions of Law:

1. After entering the United States the alien has been a member of an organization, association, society or group that believes in, advises, advocates, and teaches the overthrow by force or violence of the Government of the United States.

Exhibit "F"—(Continued.)

2. That after entering the United States the alien has been affiliated with an organization, association, society or group that believes in, advises, advocates, and teaches the overthrow by force and violence of the Government of the United States.
3. That after entering the United States the alien has been a member of an organization, association, society, or group that writes, circulates, distributes, publishes, and displays printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States.
4. That after entering the United States the alien has been affiliated with an organization, association, society, or group that writes, circulates, distributes, publishes, and displays printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States.
5. That after entering the United States the alien has been a member of an organization, association, society, or group that caused to be written, circulated, distributed, published, printed and, displayed, printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States.

IV

Exception is hereby taken to the failure of the Presiding Inspector to propose the following Conclusions of Law:

Exhibit "F"—(Continued.)

1. That after entering the United States the alien has not been a member of any organization, association, society, or group which:

(a) Did or does advise, advocate, or teach the unlawful damage, injury, or destruction of property or sabotage; or

(b) Did or does circulate or distribute written or printed matter advising, advocating, or teaching the unlawful damage, injury, or destruction of property or sabotage.

2. That after entering the United States the alien has not been a member of any organization, association, society, or group which:

(a) Did or does believe in, advise, advocate, or teach; or

(b) Did or does write, circulate, distribute, print, publish, or display printed matter advising, advocating, or teaching; or

(c) Did or does cause to be written, circulated, distributed, printed, published, or displayed printed matter advising, advocating, or teaching; or

(d) Has or had in its possession for the purpose of circulation, distribution, publication, issue or display printed matter advising, advocating, or teaching

the overthrow by force or violence of the Government of the United States, within the meaning of 8 USC, Section 137 as amended.

3. That after entering the United States the

Exhibit "F"—(Continued.)

alien has not been a member of any organization, association, society, or group which was a part of, or dominated or controlled by, any organization, association, society or group that:

(a) Did or does believe in, advise, advocate or teach; or

(b) Did or does write, circulate, distribute, print, publish, or display printed matter advising, advocating, or teaching; or

(c) Did or does cause to be written, circulated, distributed, printed, published, or displayed printed matter advising, advocating, or teaching; or

(d) Has or had in its possession for the purpose of circulation, distribution, publication, issue or display printed matter advising, advocating, or teaching

the overthrow by force or violence of the Government of the United States, within the meaning of 8 USC, Section 137 as amended.

4. That the alien was entitled to a hearing for the examination of witnesses with respect to:

(a) The use of wire-tapping in connection with the preparation or presentation of evidence in the 1941 hearing of this case; and/or

(b) The use made either directly or indirectly of intercepted telephone messages and facts ascertained as the result of such wire-tapping.

5. That the refusal to issue, at the alien's request, subpoenas and subpoenas duces tecum on

Exhibit "F"—(Continued.)

Frances Perkins, Gerald D. Reilly, and Lemuel Schofield operated to deny the alien the equal protection of the law, in violation of the Fifth Amendment of the United States Constitution.

6. That the refusal to issue, at the alien's request, subpoenas and subpoenas duces tecum on Frances Perkins, Gerard D. Reilly and Lemuel Schofield operated to deny the alien due process of law, in violation of the Fifth Amendment of the United States Constitution.

7. That, with the exception of the issue involving membership in the Industrial Workers of the World, the decision on the first hearing constitutes res judicata as to all issues involved in the second hearing.

8. That, with the exception of the issue involving membership in the Industrial Workers of the World, the second hearing places the alien twice in jeopardy, in violation of the Fifth Amendment of the United States Constitution.

9. That the refusal, prior to the hearing, to give the alien proper notice of the nature of the charges against him, operated to deny him due process of law, in violation of the Fifth Amendment of the United States Constitution.

10. That the alien was entitled upon his request during the hearing to examine the prior written statements of Government witnesses, and the denial of such requests was improper, and operated to prejudice the rights of the alien.

Exhibit "F"—(Continued.)

11. That an alien who is found to be a member of or affiliated with an organization, association, society, or group which:

(a) Believes in, advises, advocates, or teaches the overthrow by force or violence of the Government of the United States; or

(b) Writes, circulated, distributes, prints, publishes, or displays printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States; or

(c) Causes to be written, circulated, distributed, printed, published, or displayed printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States; or

(d) Has in its possession for the purpose of circulating, distribution, publication, issue or display printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States

is not thereby rendered deportable unless it is found that he had knowledge thereof, or participated therein, during such membership or affiliation. If 8 USC, Section 137 as amended is construed contrariwise, then such construction of the statute denies the alien due process of law, in violation of the Fifth Amendment of the United States Constitution, and denies the alien free speech, free press and peaceable assembly, in violation of the

Exhibit "F"—(Continued.)

First Amendment of the United States Constitution.

12. That an alien who is found to be a member of or affiliated with an organization, association, society, or group which is a part of, or dominated or controlled by, another organization, association, or group that:

(a) Believes in, advises, advocates, or teaches the overthrow by force or violence of the Government of the United States; or

(b) Writes, circulates, distributes, prints, publishes, or displays printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States; or

(c) Causes to be written, circulated, distributed, printed, published, or displayed printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States; or

(d) Has in its possession for the purpose of circulation, distribution, publication, issue or display printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States

is not thereby rendered deportable unless it is found that he had knowledge thereof, or participated therein, during such membership or affiliation: If 8 USC, Section 137 as amended is construed contrariwise, then such construction of the statute denies the alien due process of law, in violation

Exhibit "F"—(Continued.)

of the Fifth Amendment of the United States Constitution, and denies the alien free speech, free press and peaceable assembly, in violation of the First Amendment of the United States Constitution.

13. That 8 USC, Section 137 as amended, as sought to be applied in this case, operates to deprive the alien of his life, liberty and property without due process of law, in violation of the Fifth Amendment of the United States Constitution.

14. That 8 USC, Section 137 as amended, as sought to be applied in this case, operates to abridge the alien's freedom of speech, freedom of press, and freedom of peaceable assembly, in violation of the First Amendment of the United States Constitution.

15. That the application of 8 USC, Section 137 as amended, to the affiliation of an alien with the Marine Workers' Industrial Union, which ceased to exist in 1935, makes the statute an ex post facto and retrospective law, and operates to deny the alien due process of law, in violation of the Fifth Amendment of the United States Constitution.

16. That the second proceeding against the alien constituted discriminatory treatment and a denial of the equal protection of the law, in violation of the Fifth Amendment of the United States Constitution.

17. That 8 USC, Section 137 as amended, is unconstitutional and in violation of the First and

Exhibit "F"—(Continued.)

Fifth amendments of the United States Constitution.

V

Exception is hereby taken to the proposed order providing:

"That the alien, Harry Renton Bridges, be deported to Australia at the expense of the Government."

VI

It is hereby proposed that there be an order providing:

"That the warrant of arrest against the alien, Harry Renton Bridges, be cancelled, and the deportation proceeding against him be dismissed, and the bond now outstanding for his appearance be cancelled."

Respectfully submitted,

CAROL KING

100 Fifth Avenue,

New York City, N. Y.

GLADSTEIN, GROSSMAN,

MARGOLIS and SAWYER

By RICHARD GLADSTEIN

AUBREY GROSSMAN

Mills Tower,

San Francisco, Calif.

Oct. 29, 1941

Exhibit "F"—(Continued.)

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service
Before the Board of Immigration Appeals

In the Matter of

HARRY RENTON BRIDGES

File 55973/217

**REQUEST FOR ORAL ARGUMENT, AND
SPECIFICATION OF DATE THEREFOR,
PURSUANT TO SECTION 90.5 OF THE
IMMIGRATION RULES**

Pursuant to Section 90.5 of the Immigration Rules, request is hereby made on behalf of the alien in the above case for oral argument before the Board of Immigration Appeals in connection with the Exceptions herewith filed on behalf of said alien to the Proposed Findings of Fact, Conclusions of Law, and Order of the Presiding Inspector in the above case.

Further pursuant to said section, Monday, the 24th day of November, 1941, at a time convenient to the said Board of Immigration Appeals, is hereby specified as the date on which it is desired

Exhibit "F"—(Continued.)

that the said Board of Immigration Appeals shall hear the said oral argument.

CAROL KING

100 Fifth Avenue,
New York City; N. Y.

**GLADSTEIN, GROSSMAN,
MARGOLIS and SAWYER**

560 Mills Tower,
San Francisco, Calif.

Oct. 29, 1941.

[Endorsed]: Filed June 4, 1943. Paul P.
O'Brien, Clerk.

EXHIBIT "G"

55973/217—San Francisco

January 3, 1942

In re: **HARRY RENTON BRIDGES**

Before the Board of Immigration Appeals in Deportation proceedings.

Board: Messrs. Fanelli, Finucane, Charles and Cooley.

In Behalf of Respondent:

Carol King, Attorney, New York City
Gladstein, Grossman, Margolis and Sawyer,
Attorneys, San Francisco.

By Richard Gladstein
Aubrey Grossman

Exhibit "G"—(Continued)

In Behalf of the Immigration and Naturalization Service:

Albert Del Guercio

Paul V. Myron

Clarence N. Goodwin

Edward J. Ennis, Of Counsel

CHARGES:

Warrant—Act of October 18, 1918, as amended by Act of June 5, 1920, and Act of June 28, 1940 (Sec. 23(a)),

in that after entering the United States he has been a member of or affiliated with an organization, association, society, or group that believes in, advises, advocates or teaches the overthrow by force or violence of the Government of the United States; that after entering the United States he has been a member of or affiliated with an organization, association, society or group that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue or display, written or printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States.

Lodged—That he is an alien who, after entering the United States, became a member of an organization, association, society or group, which advised,

Exhibit "G"—(Continued.)

advocated and taught the unlawful damage, injury or destruction of property and sabotage.

—That after entering the United States he became a member of an organization, association, society or group, that circulated and distributed written or printed matter advising, advocating or teaching the unlawful damage, injury, or destruction of property and sabotage.

Warrant of arrest was issued on the above charges February 12, 1941 and served February 14, 1941. Hearing was accorded the Respondent at San Francisco, California, March 3, 1941 through June 12, 1941, at which time Respondent was represented by the attorneys above mentioned. Over 7500 pages of testimony were taken and 345 exhibits were accepted in evidence. The Presiding Inspector, Judge Charles B. Sears, in a report totaling one hundred and eighty-five pages, recommends deportation on all charges except the lodged charges. The Alien has excepted to the Presiding Inspector's proposed findings. The Service has taken no exceptions. Briefs were filed, and oral argument was heard November 24, 1941.

The mass of evidence and the respect and careful consideration due the proposed findings of the Presiding Inspector have required in this case an opinion of some length.

It is our unanimous opinion that the warrant must be cancelled.

The charges lodged while the hearing was in progress have their basis on the theory that the Industrial

Exhibit "G"—(Continued.)

Workers of the World, during the time the Respondent admits he was a member, advocated and circulated literature advocating the unlawful damage, injury or destruction of property and sabotage. The Presiding Inspector found that during this period the Industrial Workers of the World did not engage in such advocacy either orally or in published writings. To this the Service has taken no exception. We find that the record fully supports the conclusion of the Presiding Inspector and hence no further discussion is required.

The charges in the warrant of arrest are based on the premise that the Respondent, after entering the United States was a member of or was affiliated with either the Communist Party or the Marine Workers Industrial Union or both and that these organizations have aims proscribed by the Act of 1918, as amended.

On these charges, the evidence falls into two main divisions: first that dealing with the question whether the Communist Party and the Marine Workers Industrial Union, are, or were, organizations of the kind described in the Act of 1918, as amended, and second that dealing with the question of whether the Respondent is or was a member of or affiliated with either or both of these organizations.

Our study and analysis of the record requires us to find that membership in or affiliation with either the Communist Party or the Marine Workers Industrial Union has not been established.

Voluminous evidence to show that the Communist Party has aims proscribed by the 1918 Act, as amended, is part of the record. The Alien offered no

Exhibit "G"—(Continued.)

evidence to controvert this. A discussion of this evidence and a decision thereon is unnecessary because of our findings on the issues of membership and affiliation. So also is unnecessary a decision on the controversial issue of the character of the Marine Workers Industrial Union in reference to the 1918 Act.

Upon several legal and constitutional issues raised by the Alien, we do not pass. He challenges the instant proceeding generally upon the ground that the entire matter is *res judicata* because it was determined in the 1939 deportation proceeding against him.¹ He also contends that, by reason of the second hearing, he is subjected to double jeopardy in violation of the Fifth Amendment to the United States Constitution. In addition, the statute under which the warrant issued is challenged on a number of other constitutional grounds. First, it is said to be an *ex post facto* law violative of the prohibition in Article I, Sec. 9, cl. 3. Second, two infringements of the rights secured by the First and Fifth Amendments are charged, namely, that the statute as written deprives the alien of his protected privileges of freedom of speech and action generally, and that it does so by imposing an unconstitutional condition upon their exercise. Third, four aspects of the Presiding Inspector's proposed application of the statute are cited as showing it to be unconstitutional as con-

(1) A more limited contention based upon this doctrine will be referred to *infra* p. 431, n. 77.

Exhibit "G"—(Continued.)³

strued. All involve the First and Fifth Amendments.² Finally, the proceeding itself was attacked as falling short of that fairness required by the Fifth Amendment. This attack was both general and particularized. The specific grounds detailed were three in number: insufficient notice, denial of the right to examine prior statements of witnesses, and refusal to reopen for an investigation into alleged wire-tapping by the Federal Bureau of Investigation. Upon these contentions we make no findings.

Aside from these purely legal problems, the case presented to the Presiding Inspector by the Service contained testimony of numerous witnesses which we do not pass upon in detail. The Presiding Inspector rejected the testimony of numerous witnesses

(2) 1. The proposed application of the statute is said to deny due process because it involves deportation for membership in an organization not shown to advocate overthrow of the Government by force and violence.

2. It is said to constitute such denial under an analogy to the Equal Protection clause on the ground that no previous deportations for membership or affiliation with the M.W.I.U. have been undertaken for some years.

3. It is said to deny due process by basing deportation on the ground merely of membership in an organization which distributes literature, in the absence of a showing that the Alien knew the contents of the literature.

4. The statute as construed is said to be so indefinite in its delineation of affiliation as to be unconstitutional.

Exhibit "G"—(Continued.)

presented to show membership.³ Independent analysis of their testimony convinces us that its rejection was more than justified.⁴

Our discussion falls under the two main headings, Affiliation and Membership. These two issues are, of course, complementary rather than exclusive. However, since testimony which does not establish affiliation cannot establish membership, we treat only

(3) Out of fifteen witnesses relied on by the Service to show membership, only two, O'Neil and Lundeberg, were accepted as directly supporting the proposed finding on that point, and one, Barlow, was given some weight in the determination.

(4) It is unnecessary to detail here the patent contradictions and extreme improbabilities which riddle the testimony of Richard A. St. Clair; nor need we recreate the atmosphere of complete unreliability which the cold words of the record eloquently convey. The tortuous convolutions of Maurice J. Cannalonga's testimony rendered it worthless on its face. No consideration need be given the suggestion of improper conduct on the part of the F.B.I. in coercing him into appearing. That he lied freely is evident; and if it were not, his story was confused and unimpressive to a degree which would have rendered it valueless had there been no cross-examination or subsequent impeachment. William C. McCuiston appears in a light scarcely more favorable. The episode to which he and Innes testified contained initially strong elements of the improbable. His testimony as to how and where he met Bridges varied. He attempted to bolster it by connecting it with an alleged attempt on Bridges' part to "get" Lundeberg at a time when the record shows Bridges and Lundeberg were on terms of friendship and mutual cooperation. And, finally, his testimony is replete with statements which suggest a mental state bordering on egomania. Indeed, although there are other adequate grounds, one of

Exhibit "G"—(Continued.)

the two main witnesses, O'Neil and Lundeborg, under Membership, and all other secondary testimony under Affiliation.

The case presented on affiliation comprises a disconnected group of items showing that, on occasion, the Alien maintained friendly relations with some Communists, opposed "red-baiting", cooperated di-

the strongest factors tending to discredit Peter J. Innes, another witness, is the fact that his testimony dovetails so perfectly with that of McCuistion. Neither is worthy of credence. John O. Thompson is another discredited witness whose testimony merits no analysis here. Insofar as Ezra Chase and the Lovelaces gave testimony requiring comment, they are discussed below on the point of affiliation. Nathaniel Honig's testimony presents a slightly more complex problem. Where other Service witnesses testified only to isolated Communist meetings at which they claimed to have seen Bridges, Honig remembered at least sixteen. He did not, however, remember the address or the name of the owner of any of the homes where they took place, apparently because he was instructed to forget them (1462). He also remembered little or nothing specific which occurred at them. He was the only witness whom Bridges might have been expected to remember, had they had the alleged contacts, but whom he denied ever having met. The Alien's testimony on this point was corroborated by Schmidt. The evidence of Amos Kelley, Thomas Laurence and Sam Diner presents no elements worthy of mention here beyond those detailed by the Presiding Inspector.

(5) In only two instances did more than one witness presented by the Service testify to the same alleged occurrence. The testimony of the two Lovelaces related to one meeting; and that of Innes and McCuistion partially coincided on another episode. All other instances were isolated ones not inter-re-

Exhibit "G"—(Continued.)

rectly or indirectly with the M. W. I. U. or Communists in cases in which he states they were seeking specific ends which he and his union also sought for reasons legitimately connected with their own welfare, and expressed views thought to have similarity to some of those espoused by members of the M. W. I. U. and of the Communist Party. This presentation at best has but few elements not passed upon in the previous proceeding. It is doubtful that, taken at their claimed value, those elements would justify departure from the result there reached. And, upon analysis, it becomes apparent that the elements of difference here present have no substantial tendency to worsen the Alien's position under existing law. But wholly apart from all such questions, we have concluded upon independent examination that the matters brought to our attention by the Service and relied on by the Presiding Inspector in his proposed findings, insofar as they find support in the record, do not warrant our holding that the Alien was affiliated to any proscribed organization within the meaning of the applicable statute.

On membership, we have rejected the evidence given by O'Neil and Lundeberg as not worthy of belief. That of O'Neil, a witness who perjured himself on the stand, comprises unsworn hearsay and is internally contradictory. That of Lundeberg, admittedly an active rival—even enemy—of the Respondent, is also internally inconsistent. Further,

lated or supported by the evidence of more than one alleged participant. Cf. the testimony of Ryan and Laurence.

Exhibit "G"—(Continued.)

the record strongly suggests evasion and equivocation on the part of that witness; and it is clear that, on occasion, he has made statements contradicting the ones relied on.

We have, accordingly, concluded that the case relied on by the Service and accepted by the Presiding Inspector, is not sustained.

In the detailed discussion which follows, we take up first the legal requisites of affiliation and the evidence presented to fulfill them, and second the membership witnesses.

I. AFFILIATION

A. The Meaning of Affiliation

The Act of 1918, as amended, makes an alien who is or has been affiliated with an organization proscribed by the act deportable equally with a member. "Affiliation" has not been defined in the statute.⁶ At best the term is inexact. We have no aid from the legislative history of the statute in determining what is included and what is excluded. No comprehensive definition of the term has ever been attempted, and

(6) Section 4(e) does provide:

"(2) The giving, loaning or promising of money or anything of value to any organization, association, society or group of the character above described shall constitute affiliation therewith; but nothing in this paragraph shall be taken as an exclusive definition of advising, advocacy, teaching, or affiliation."

But this language has no application to this case and is of no assistance in determining whether facts other than those governed by it come within the scope of "affiliation".

Exhibit "G"—(Continued.)

we attempt none. But we do have some assistance from judicial authority.

The cases in which affiliation was held established are so much stronger than the record here as to be of little assistance. Employment as managing editor of a paper published by the Communist Party, and being an instructor and a director of a school teaching the theory of Marxist-Leninism under the official guidance and leadership of the Communist Party and the Communist International were held to be facts establishing affiliation within the meaning of the Act. *Branch v. Cahill*, 88 F.(2d) 545 (C.C.A. 9th, 1937). Selling "The Daily Worker", a Communist paper, copies of which were received directly from the Communist Party, announced sympathy with the form of government in the Soviet Union and willingness to establish such a form of government in the United States by force, sympathy with the aims of the Communist Party and desire to become a member (although thwarted in this desire because considered not sufficiently intelligent to join), membership in the Unemployed Council, an organization indirectly associated with the Communist Party, and finally contributing money to the Communist Party were considered sufficient to establish affiliation. *Wolek v. Weedon*, 58 F. (2d) 928 (C.C.A. 9th, 1932). In that case, however, the giving of money to an organization proscribed by the act is in and of itself under the statute affiliation irrespective of other circumstances. Membership in an organization which is affiliated with another organization proscribed by the statute constitutes affiliation with the

Exhibit "G"—(Continued.)

latter. *Kjar v. Doak*, 61 F. (2d) 566 (C.C.A. 7th, 1932); *In re Saderquist*, 11 F. Supp. 525; *aff'd* 83 F. (2d) 890 (C.C.A. 1st, 1936). In a concurring opinion where the court upheld deportation on the ground of past membership in the Communist Party, Judge Augustus Hand expressed the view that affiliation with the Communist Party was established by an alien's pledging himself to perform certain tasks prescribed by the Party in order to secure reinstatement. *United States ex rel. Yokinen v. Comm'r* 57 F. (2d) 707 (C.C.A. 2d, 1932).

The nearest approach to a definition is found in *United States ex rel. Kettunen v. Reimer*, 79 F. (2d) 315 (C.C.A. 2d, 1935), where the facts stated were found insufficient to constitute affiliation. This case involved an alien, previously a distributor of "The Daily Worker" among other papers, who attended a meeting of the Communist Party, executed an application for membership in the Party, paid the admission fee, but who later changed his mind about becoming a member and asked the secretary to whom he gave his application to withhold formally submitting it. The alien never became a member of the Party. The Court stated:

"In deciding this case, we shall not attempt to give a comprehensive definition of the word 'affiliation' as used in the statute. Very likely that is as impossible as it is now unnecessary. It is enough for present purposes to hold that it is not proved unless the alien is shown to have so conducted himself that he has brought about a status of mutual recognition that he may be re-

Exhibit "G"—(Continued.)

lied on to cooperate with the Communist Party on a fairly permanent basis. He must be more than merely in sympathy with its aims or even willing to aid it in a casual intermittent way. Affiliation includes an element of dependability upon which the organization can rely which, though not equivalent to membership duty, does rest upon a course of conduct that could not be abruptly ended without giving at least reasonable cause for the charge of a breach of good faith. So tested we cannot agree that there was evidence to establish that this ~~re~~ or was affiliated with the Communist Party."

(7). In the unreported case of United States ex rel. Tolsky v. Wilson (S.D. N.Y. 1920), a similar view was expressed. The opinion states:

"The upshot of the evidence, therefore, comes to this: That there was found upon his person an announcement of lectures to be given by a revolutionary organization and that he was distributing a pile of papers, among which was the manifesto of this organization, at some 'act' or 'performance' at Turner Hall, the character of which is not stated. His possession of an announcement of lectures is not evidence of anything whatever, except that he was interested enough not to throw it away. Even had he attended the lectures it would have been no evidence that he was a member of or affiliated with the Union.

"Nor does the distribution or sale of the pamphlets among which the manifesto was one constitute evidence of affiliation or membership with the Union. Nothing is shown of the other documents, how many or what they were. That he meant to have the document reach the hands

Exhibit "G"—(Continued.)

The Kettunen definition was accepted in the decision of the 1939 deportation proceeding against Bridges. It is adequate here. Whatever may be the exact limits of the term, it is sufficient for decision that "affiliation," when not otherwise defined by statute, connotes at the least some bond, however informal, of some continuing dependability between a proscribed organization and the person affiliated.

B. Affiliation—The "Waterfront Worker"

Pivotal to the case presented by the Service as showing affiliation is the evidence regarding the Alien's connection with the "Waterfront Worker",

of others was of course evidence that he approved of its effect upon them, and that he was therefore in general sympathy with its sentiments. There are, it is true, other possible interpretations even of this, but it seems to me that there would be evidence that his own beliefs were in harmony with those expressed and that he was willing to help in their propaganda. An effective form of propaganda is of course by means of such printed pamphlets.

"That is, however, not the ground for his deportation, which depends upon his membership or affiliation with the organization. It would obviously be an inference without any just foundation whatever to conclude that he was a member, because he distributed its manifesto. Argument upon that seems scarcely necessary. As to affiliation the case is not so clear, and depends upon how one defines that word. I take it to mean a connection more loose than membership usually applicable to a relation of co-operation between the members of two or more organizations. Perhaps it may also include an irregular connection of a single individual with the society, not amounting to membership.

Exhibit "G"—(Continued.)

a mimeographed paper published from December of 1932 until 1936. That paper^s dealt primarily with

However this may be, it seems to me pretty clear that it involves a mutual recognition of permanent cooperation between the organization and the person affiliated and not a spasmodic or casual assistance. Mere sympathy with the aims of the society, even accompanied by efforts to further its aims, does not fall within that word.

"I can find nothing in the evidence throwing any light upon the character of the meeting in Turner Hall, or even that it was held under the auspices of the Union, but, if so, that would not be enough. To distribute pamphlets for the Union indicated no affiliation with it in the sense that I understand it. One may be willing for that moment to help, but there must be some more permanent nexus than that." (Underscoring supplied.)

(8) Constant reference to the "Waterfront Worker" as a newspaper tends to mislead. It was simply a mimeographed collection of news items, essays, letters and diatribes which, according to the testimony was edited after September 15, 1933 by methods bordering on anarchy. It had no headquarters, no consistently supervised and regulated policies, no editing or revision of submitted articles. The "editors" sometimes mailed in their own contributions. The staff did not remain constant, the format varied and publication dates were highly irregular, at least in 1934 when, presumably under the press of events attending the strike, the paper jumped from a bi-monthly very nearly to a weekly. (2557; 5385-6; 5795-8; 5825-9; 5914; and see Government Exhibits listed in Table, *infra* p. 390). The editors were eight or ten in number (5813-6).

Exhibit "G"—(Continued.)

the labor problems of the San Francisco longshoremen. Bridges, in both the 1939 and the 1941 hearings, testified that he had been one of a number of men who were instrumental in its publication over a portion of its existence.

The Service contends that the paper was shown to be an instrument of the Marine Workers Industrial Union⁹ and of the Communist Party; and that the Alien's connection with it as one of its editors establishes his affiliation with both of those organizations (Service Brief, pp. 28-44). The Presiding Inspector accepted this contention in the findings he recommends. (P.I. 92-7).

The "Waterfront Worker" evidence, not intrinsically more important than other matters relied upon to show affiliation generally, assumes exceptional significance to the Service's case for three reasons. First, it comprises the most striking and only substantial difference between the case presented on affiliation in 1939 and that in the present record.¹⁰

(9) The question whether the M.W.I.U. was itself an organization proscribed by law is here assumed solved in the Service's favor. It is, however, very doubtful that that union was shown to be more than an affiliate to some extent of the Communist Party. Contrast the Presiding Inspector's statement (P.I. 62) with: In re Harry Renton Bridges, file 55973/217, Appendix A to the opinion of January 8, 1940, p. 102; State v. Diamond, 27 N. M. 477, 483-4, 202 Pac. 988 (1921). Thus, there would be a serious question as to the effect even of proof that the Alien was, in turn, affiliated with it.

(10) As to the effect if any of the fact that much of the evidence in this hearing relates to matters previously passed on, see *infra* p. 431, n. 77.

Exhibit "G"—(Continued.)

Whereas in 1939 no issues of the "Waterfront Worker" were in evidence (P. I. 91) and little or no reference was made to its content, in this hearing a number of issues were introduced and analyzed. Second, this evidence is presented by the Service and accepted by the Presiding Inspector as the starting point from which, explicitly or implicitly, the other analyses of and conclusions on affiliation proceed. And, finally, it comprises one of the two specific instances proposed by the Presiding Inspector as bases for adverse findings on the Alien's credibility as a witness. ¹¹

As a basis for the recommended finding of affiliation, the relevance of the "Waterfront Worker" depended upon the following chain of reasoning: The paper discloses that it followed or favored certain policies and the paper together with other evidence shows that some or all of its loose association of editors engaged in certain activities, all of which taken as a whole justify an inference that its editors maintained the forbidden degree of connection with one or more proscribed organizations. Bridges was one of those editors. He was, therefore, affiliated within the meaning of the statute.

A refinement of the problem thus presented is provided by the Alien's contention that he participated in the editing of the "Waterfront Worker" during that period only which followed September 15, 1933. He conceded that the paper prior to that date was

(11) The other, the Madison Square Garden episode, will be treated infra p. 487, n. 111.

Exhibit "G"—(Continued:)

put out under M.W.I.U. auspices. But he testified that subsequent to September 15, 1933, the date when he became connected with it, it was not. The Presiding Inspector recommends both a finding that the Alien did become an editor prior to September 15, 1933 (P. I. 92), and also the broad finding that affiliation on the part of its editors was shown for the entire period of the paper's existence, both before and after September 15, 1933 (P. I. 94).¹² Because the latter recommendation was made to depend in some indefinite, but large, part on the former,¹³ they will be analyzed in the order given.

1. The Issue as to the Time When the Alien Became Connected with the "Waterfront Worker."

So far as is shown by this record, the paper first came into existence in December of 1932.¹⁴ It is conceded that, at the time of its origin, the "Waterfront Worker" was edited by members of the M. W.

(12) A finding that the "Waterfront Worker" was an instrument of the M.W.I.U. until it ceased publication in 1936 (P.I. 94; Service Brief, p. 33) would be plainly erroneous. The M.W.I.U. disbanded in 1935 (1921; 5886; P.I. 59; Service Brief, p. 33). Moreover, such a finding would seem unduly sweeping in view of the fact that the only issue in evidence published later than December 1934 (Gov. Ex. 250) is one for April 1936 (Gov. Ex. 251).

(13) See *infra* p. 413.

(14) (P.I. 88; 91). Bridges thought January of 1933 (P.I. 92, n. 80; 5378). It seems clear, how-

Exhibit "G"—(Continued.)

I. U. The Alien testified at both hearings,¹⁵ however, that the paper ceased publication for a time after it had proved unsuccessful under M. W. I. U. sponsorship, and that his group then revived it (2553; 5823) and edited it independently of any financial or mechanical connection with or assistance from the M. W. I. U. (5391-2). This testimony is not controverted.

The recommended finding that Bridges and his group did not start publication of the paper in September, 1933, but were responsible for the paper's publication for the entire period from December of 1932 until its abandonment in 1936 (P. I. 92), rests upon alleged internal inconsistencies in the Alien's testimony and upon inconsistencies thought to appear between that testimony and the characteristics of the paper as revealed by examination of the numbers introduced in evidence (P. I. 92-7).

ever, that he was mistaken. The earliest issue in evidence is Volume I, No. 2; it refers back to a "first issue" and a "December issue"; and a reference to the first issue in another periodical places the first issue in December of 1932 (Gov. Ex. 131, p. 26). This mistake was based on the explicit assumption that Volume I, No. 1 must have preceded by one month Volume I, No. 2, which the Alien saw in evidence (see Gov. Ex. 203; 5832). And it is consistent with his testimony that he knew little about the publication of the earlier issues (5378; 5800).

(15) All references to the Alien's 1939 testimony, unless otherwise marked, relate to that portion of the present record containing sections of the 1939 testimony read into evidence at the instant hearing. See 2527 ff.

Exhibit "G"—(Continued.)

The first basis upon which is rested the refutation of the Alien's testimony here is his own prior testimony at the 1939 hearing (P. I. 89, 90, 93). In that proceeding Bridges stated that the M. W. I. U. had started the paper, that it had then lapsed for five or six weeks and that he had assisted in its revival in September or October of 1932, after that lapse (2553-4). His memory as to dates was uncertain, however, for he could not remember whether September or October of 1932 was when the paper was revived by his group or whether it was merely in existence then and taken over later (2554; 2562-3).

Pointing out that this testimony was given in a hearing at which less emphasis was placed on the matter (P. I. 93); the Presiding Inspector accepts part of it as true and rejects the Alien's 1941 correction and amplification of it. He thus concludes that, in fact, the paper was in existence in September or October of 1932, then lapsed for a time, and that the first issue with which the Alien was connected was that of December 1932 (P. I. 90, 91).

This conclusion suffers from grave difficulties: Nowhere in the record is there indication that there were any numbers of a paper called the "Waterfront Worker" preceding the "Volume I, No. 1" of December 1932.¹⁶ It is thus necessary, in order to

(16) The assertion is made for the first time in the Service's brief (pp. 30-1) that the "Waterfront Worker" must be identical with a certain "long-shore bulletin" referred to in a book by William F. Dunne, a Communist (Gov. Ex. 191, p. 64), as having been published by the Communist Party in

Exhibit "G"—(Continued.)

agree with the view taken of the Alien's 1939 testimony, to assume that there was a separately numbered series of "Waterfront Workers" published prior to December of 1932, although no issue in such a series was in evidence and no one testified that it ever existed.¹⁷ Moreover, to conclude that the

1932. Nothing is cited nor is anything found in this record to support the assertion. Note that there was apparently an official publication of the M.W.I.U. and its predecessors published from October 1, 1928 (Gov. Ex. 242, p. 1) until approximately December 1933 (id. p. 8, 9, 27). It is conceivable that this was the "longshore bulletin" referred to, although no such inference need here be drawn.

(17) It may be observed that the review of the December 1932 issue appearing in the "Party Organizer" refers to it as the "first issue" (Gov. Ex. 131, p. 26).

An odd episode in McCuistion's testimony may be noted, also, although it is not cited by the Service or by the Presiding Inspector.

"Q. When was the paper first published?

* * *

"A. The approximate date was two years after the strike; I should say around the early part of '32 or the latter part of '31—it might have still been in existence." (2102)

This testimony is not only substantially meaningless. It was given by an unreliable witness who was not believed by the Presiding Inspector on the material points of his testimony adverse to the Alien and whom we do not find credible (see supra; p. 373, n. 4). No weight can be given to his further statements that the "Waterfront Worker" was edited by a Communist Fraction in New York (e.g. 2099-2102).

Exhibit "G"—(Continued.)

Alien's connection with the paper began in 1932 would ignore the unchallenged testimony at both hearings that Bridges began to participate in editorship in connection with his activities in the International Longshoremen's Association—an organization which did not exist on the coast in 1932 and which he did not join until after its appearance there in June of 1933. Such a conclusion would, further, while purporting to accept his 1939 testimony, reject the only reason given at either hearing for the existence of a gap in publication—namely the failure of the M. W. I. U. to make a success of the paper. Yet it would be predicated upon a finding that a gap did exist in 1932.

The Alien, in explanation of his previous testimony, stated in the current proceeding that in 1939 he had testified mistakenly as to the year, and that he actually became connected with the paper in September or October of 1933 (5797-8; 5379; 5803). This is a plausible explanation, since it is predicated upon a slip of the tongue or the memory as to one item only—the year in which the change occurred. He was consistent in placing the event in September or October; and he explained why that fact stuck in his memory, the reason being the Matson strike, which was called in October 1933. (5366-8; 5386; 5803; 5830-1.) If supported by other items of testimony or of documentary evidence, this explanation may be believed.

The Alien did so support it. He stated positively

Exhibit "G"—(Continued.)

that the hiatus in publication mentioned in the previous hearing had occurred just prior to September or October of 1933 (5801), and that the point at which the editorship changed is shown by a change in the masthead of the paper (5804; 2554), a gap in the regular appearance of its issues (5823; 2553) and other similar items showing a change in editorship at that time.

The table of "Waterfront Worker" issues set forth on page 390 shows such a gap in publication just prior to September 15, 1933. That tabulation

Exhibit "G"—(Continued.)
 TABLE OF ISSUES OF "WATERFRONT WORKER" IN EVIDENCE

Volume & Number ¹⁸	Date of Issue	No. of Pages	Witness & Date Introduced in Evidence	Available to Allen prior to his testimony (19)	Gov. Ex. No.
I, 2	Feb. 1933	8	Diner	X	203
I, 6	June 1933	8	Diner	X	204
I, 7	July 1933	6	Diner	X	205
I, 8	July 1933	6	McCuiston	X	247
I, 919	Aug. 15, 1933	6	Bridges		280
I, 1020	Sept. 15, 1933	4	Bridges		281
I, 12	Oct. 18, 1933	6	Bridges		283
II, 3	Jan. 29, 1934	8	McCuiston	X	248
II, 4	Feb. 12, 1934	8	McCuiston	X	249
II, 7	Mar. 22, 1934	8	Bridges		285
II, 35	Nov. 19, 1934	6	Bridges		286
II, 41	Dec. 31, 1934	8	McCuiston	X	250
IV, 15	Apr. 13, 1936	8	McCuiston	X	251

¹⁸ See infra p. 26 for the reasons why it is apparent that the Alien did not have any copies of the "Waterfront Worker" for this period available for examination except these in evidence when he testified.

¹⁹ This was the last issue in which the masthead or other parts of the paper acknowledged the cooperation of the M.W.I.U. All previous ones do.

²⁰ This is the issue which the Alien identifies as the first to appear under the editorship of the group with which he was associated. It is the first of the two consecutive issues in which publication is attributed to I.L.A. members. After the October 18 issue, the masthead is silent as to sponsorship, although references to the I.L.A. group as editors appear in the body of some subsequent issues.

Exhibit "G"—(Continued.)

reveals all issues prior to that of August 15 to have been dated by month only, no day of publication being mentioned. Also, but a single issue appears each month until July, when two were published. Thus, the paper started as a monthly, changing in July to a semi-monthly. In this setting, the date line, "August 15", on the next following issue strongly suggests that continuation on a semi-monthly basis was then contemplated, since in the past when it had been appearing monthly, the day of the month had not been thought important to mention. So too, the fact that the September 15 issue was numbered 10 and the October 18 issue was numbered 12 shows that semi-monthly publication was in force at that time also. Thus, between two periods in which the paper was published on a semi-monthly basis appears a month—between August 15 and September 15—when no paper was issued.

While these facts may not be conclusive,²¹ it is reasonably to be inferred from them that there was a cessation of publication for some part—or all—of the four weeks' interval.²² The conclusion that

(21) They do, however, preclude an affirmative finding such as that recommended by the Presiding Inspector that "there was no such lapse just prior to September 1933." (P.I. 97).

(22) That it was a gap of, at most, four weeks, rather than one of five or six weeks or two months as the Alien thought, is clearly not a material variance on his part.

Exhibit "G"—(Continued.)

some such hiatus did exist is further borne out by examination of the sizes of the various issues. No issue prior to that of September 15 had fewer than six pages, while the September 15 issue had but four. Their respective sizes are as follows: February and June issues, which appeared monthly, eight pages; two July issues and the August 15 issue, appearing at two-week intervals, six pages. Thus, assuming an unbroken publication schedule and an unchanged staff, the record indicates a production capacity of eight pages monthly in the early period and of twelve pages monthly in the later months. Yet, after a full month's interval, the succeeding issue, that of September 15, fills four pages only.²³ There is no evidence of change in the circumstances of publication which might explain this other than the Alien's statement that publication lapsed at this time and new editors took over.

True, it is the fact that the numbering of the issues was unbroken and that other indicia of continuity appeared (P.I. 93).²⁴ But that fact does not

(23) See *infra* p. 397, for Bridges' testimony that the paper first appeared as a four-page one, growing later to six and finally to eight pages. Compare Table, *supra* p. 390.

(24) Thus, reference is found in the December 1934 issue to the paper's third birthday; and it is clear that the first one must have been December 1932. Similarly, the paper in one issue states that it has been advocating a certain policy for ten months — again, evidently including the early months of 1933.

Exhibit "G"—(Continued.)

warrant an inference unfavorable to Bridges' evidence that the editorship changed. The Alien testified that the group with which he collaborated took over the paper in an effort to profit by whatever good will it had gained.²⁵ It is entirely consistent with the situation described that they should have carried on the form and numbering and continued those labor policies with which they agreed,²⁶ stressing the continuity of the paper itself without emphasizing unduly such changes as there were. Such maintenance of the indicia of continuity in newspaper entities is not unusual despite alterations in management and policy.²⁷ We cannot hold that here it proves an absence of such change.

(25) Although consistent in his statements that the M.W.I.U. had failed in its objective of gaining the longshoremen's patronage for the paper, the Alien testified that, before its abandonment, it had gained some following among the unemployed. He stated further that the unemployed offered a serious threat as potential strikebreakers, and that one of the principal purposes of his group in taking over the paper was to utilize its influence with them. (5386-7; 5810).

(26) See *infra* p. 30 for detail as to the alterations in the paper's policies. Note that the Alien did not profess to know much about the policies of the previous editors (5378).

(27) A striking example of change in policy which was not emphasized as such is the statement on page 2 of the issue for January 29, 1934, where it is flatly denied that the paper was published by the M.W.I.U. or helped by it otherwise than by the contribution of news items and by similar matters which comprised a kind of assistance the paper would and did accept from anyone. Cf. Alien's

Exhibit "G"—(Continued.)

There are affirmative evidences of a change in editorship. The June issue, the second July issue and the August 15 issue all carry in the masthead, prominently displayed, the statement that the paper is issued by a group of longshoremen with the cooperation of the M. W. I. U.²⁸ The September 15 and October 18 issues, however, state in the masthead that the paper is edited by a rank and file group in the I.L.A., and reference to the M.W.I.U. is omitted. This change, significant in itself, is given added importance by the fact that, both in his 1939 and 1941 testimony, Bridges refers to such an alteration in the masthead (2554; 2556; 5380), stating in the current hearing that it was the surest indication of when M. W. I. U. sponsorship left off and that of his group began (5804). In the latter hearing, moreover, it appears that this change was the basis upon which he immediately identified the September 15 issue as the first one with which he was connected (5831-2).

statements (5799-5803). Contrast the flaunting of M.W.I.U. cooperation in the issues which preceded the time when the Alien stated he became connected with the paper.

(28) The other two early issues credit publication simply to "a group of longshoremen," but mention in the body of the paper the cooperation of the M.W.I.U. Bridges testified that this "group" was wholly different from the one of which he was a member (5379-80; 5798-9; 5808-10). And nothing is cited or found in the record to support the Service's argument to the contrary (Service Brief, p. 32).

Exhibit "G"—(Continued.)

Other alterations appear in the characteristics of the paper following September 15, 1933. At intervals throughout the issues of the earlier period occur sentences which show their writer to have had pretensions to a degree of literary sophistication. Such, for instance, is the effect of the peroration which terminates the leading article on page one of the issue for June:

"Longshoremen, of the McCormick Company and all other companies, do you not think it time to arouse yourselves from your lethargy and put an end to these miserable conditions by organization?"

There are other examples. That is not to say, however, that the greater part of the language employed in the earlier issues fails to reflect a less educated waterfront origin. It does. The significant point is that the more sophisticated style does not appear at all in the issues following September 15.

Two similar evidences of changed editorship are observable. In the issues preceding that of September 15, much of the material purports to come from "A Correspondent" at some port or location other than San Francisco. And not a few items carry date lines which are obviously imitative of customary newspaper style.²⁹ After September 15, the

(29) e.g., "Copenhagen, May 23—On May 1, the sailors of the cruiser * * * etc." (June issue, p. 7); "New York, Aug. 6—A cable from the International Seamen's * * * etc."; "Santiago, Chile, Aug. 8—All the crews on the ships * * * etc." (Aug. 15 issue, p. 4).

Exhibit "G"—(Continued.)

former of these evidences of some slight acquaintance with the forms of professional journalism disappears. The latter diminishes markedly in the first succeeding issue and is dropped soon thereafter, and with it disappears also the last vestige of the foreign news which had indicated connection with some fairly extensive news-correspondent service. As a general observation it may be said, too, that following September 15, the paper shows a rapid and striking trend towards concentration on matters of local labor interest to the exclusion of those broader and more remote ones which appear in the early issues and support the testimony that the paper was then the organ of a body having more catholic interests.

Bridges testified to the existence of many of these differentiating factors. He was specific about the altered masthead (2554; 2556; 5380; 5798; 5804) and stated as to the methods by which the paper had been edited by the predecessors of his group, " * * * the paper operated in a way like a regular newspaper does, * * *" (5384). Moreover, wider deviations from consistency in formal matters appear in the later issues than are observable in the earlier ones, and this tends to bear out his testimony as to the rather helter-skelter manner in which the editorial functions were carried on by his group (5385-7; 5795-6; 5825-9; 5907-9; 5913-14)³⁰. He fur-

(30) "Q: You were editor? * * * " "A: Everybody edited it." (2553). See p. 381, n. 8 *supra* as to the methods by which the paper was edited.

Exhibit "G"—(Continued.)

ther testified that the first issue with which he was connected came out at the time of the Matson dock strike in the Fall of 1933. (5386; 5803; 5830-1). And that strike is the subject of much of the material in the September 15 issue.³¹

It is noteworthy also in this connection that Bridges early in his testimony described the paper as having started with four pages, later increasing to six and finally to eight (5378). This fits the course of its development after September 15, 1933; it does not describe the earlier issues.³²

Such corroborations of his testimony by the is-

(31) A collateral matter is important here. The Presiding Inspector supports his inference that the "Waterfront Worker" was in the Alien's control from December 1932, by pointing out that the early numbers fit Bridges' description of the paper as one emphasizing organization. He makes the statement that by September 1933 the organizing period in the I.L.A. was over. This ignores the testimony that organization of the type that the Alien and his group sought was touched off by the winning of the Matson strike in October of 1933 (5366-8; cf. 3069, 1939 Transcript). The paper itself supports this testimony. And nothing is cited or found to support the Presiding Inspector's tacit assumption that Bridges was engaged in organizing activities in December 1932, some months before the I.L.A. charter was granted in June 1933. Indeed, it seems to be conceded that, as the Alien testified, he was not even a charter member of the I.L.A., although he joined it soon after its revival in the middle of 1933 (5941-2).

(32) See Table, *supra* p. 390. The alien was here responding to a question about the issues published by the M.W.I.U. in the early months.

Exhibit "G"—(Continued.)

sues of the paper itself might be less than impressive but for the apparent fact that the Alien had not before testifying examined a file of the "Waterfront Workers" issued during this period (5800-1). As the Presiding Inspector observed (P.I. 97), the key issues were not yet in evidence when his important testimony was given (5823-4)³³ (see Table, *supra* p. 390). Moreover, the striking errors in his testimony serve to show that he had not familiarized himself at any recent date with even the most obvious facts about the publication.³⁴ And, viewed in

(33) For example, there were only two issues of the "Waterfront Worker" introduced which contained the masthead reference to the I.L.A. group of longshoremen. Neither of these had been introduced at the time when the Alien gave his most positive testimony about that matter.

(34) Thus, he testified in 1939 that five or six weeks intervened between the two editorships (2553), and in the 1941 hearing he widened the gap to two months (5801-3). Obviously, enlarging the gap in publication served no purpose beneficial to his contention; and, equally obviously, either period he mentioned was too long on the face of things once the issues of the "Waterfront Worker" were examined. Again, he was led on cross-examination into testifying at one point that there was no issue for September 1933 (5824), although when confronted with such an issue a short time later, he unhesitatingly identified it as the first one edited by his group (5831). It is difficult to agree with the implication of the Presiding Inspector (P.I. 97, 93, 91) that this latter discrepancy was the result of the Alien's hope that the Service did not have proof to contradict him, since it occurred

Exhibit "G"—(Continued.)

this light, they strongly attest his honesty as a witness.

While some of his mistakes are strongly in his favor, however, there is one discrepancy³⁵ which, on

at a time when the cross-examiner was patently pressing the point.

"A. * * * Now, if you have enough issues there you can follow them right down the line * * *. If you have got all the issues, you will see the issue in there, the first issue we put out * * *. Now, if you have got them all, you have got that one, too."

"Q. You would be surprised what we have got. You will get some surprises before it is over." (5803-4).

Nine issues had been introduced prior to this colloquy. Bridges' testimony about the gap in publication followed it. It is difficult to see what purpose was to be served by misstatement in view of the fact that, when produced, the papers themselves disclosed evidence corroborating the substance of his contentions.

Similar in effect is the Alien's mistake as to when the first issue of the paper appeared (*supra* p. 384, n. 14); so too of his testimony about the size of the early issues (*supra* p. 397, n. 32).

(35) Some significance is also attached by the Presiding Inspector to Bridges' statement that the manner in which the word "stevedore" was used in an early issue proves that its then editor was no true longshoreman and, in contrast, that it was not so used in the issues with which he was connected (5802; 5833-4). We agree with the Presiding Inspector (P.I. 97) that the issues before and after September 15 do not reveal to the lay mind any marked distinctions in usage in this respect. If there are any, they lie in nuances of meaning not discernible to a reader unversed in waterfront ter-

Exhibit "G"—(Continued.)

the surface appears less innocuous. He stated in the current hearing that the address first used by his group was one on Market Street (5834-5). The papers in evidence reveal that the Market Street address was never used after July. This, with some justification, was taken as an indication that Bridges was in fact an editor before September 15 (P.I. 93). The apparent force of such a discrepancy is mitigated; however, when the testimony is read in its entirety. His identification of the Market Street address as one used by his group is coupled with the statement that he had no recollection on this point whatever until he saw that address on one of the earlier issues produced at the hearing (5834-5). This assertion must, in turn, be taken together with his repeated statements throughout the hearing that he had never attached any importance or paid any attention to the mailing addresses used (5878-9), had never visited any of them (5835-6), and professed no independent recollection about them. He also testified that when his group took over the paper they took over its old address (5381-2).³⁶

minology. Bridges insisted, however, that the difference was plain (5833-4); and at most, that testimony, if erroneous, constitutes no more than a failure on the Alien's part to produce affirmative proof of a minor substantiating factor. Rejection of his opinion on a point of usage does not raise it to the level of a misstatement of fact material to the case.

(36) This is borne out by the papers themselves. The same address (3470 19th Street) is used from July 1933 to February 1934, at which time it is changed for a post office box which is used for the

Exhibit "G"—(Continued.)

Hence it may be inferred that Bridges simply identified the wrong address as the one his group had inherited in September. It is an interesting coincidence that in the 1939 hearing he made the exact converse of this mistake on the same point. He there mentioned a post office box as being the first address used by the paper under the editorship of his group (2563).³⁷ No such box was used by the paper until February of 1934, some months after it had changed hands.

To label devious the testimony on such matters simply because, when elicited piecemeal more than five years after the event and over the course of two hearings, it does not present a tightly articulated and smoothly rationalized story, would be little short of gratuitous. The Alien's testimony is not that of a witness who is straining to justify himself by dovetailing every detail of carefully planned or coached testimony. Broad and memorable items emerge through the confused surface, which inevitably results from the evidence-taking process, as a solid structure of consistent major facts—the Matson strike, the gap in publication, the change

remainder of the paper's existence. It is noteworthy that Bridges made no pretense of remembering specifically why this latter change of address was made (5877-8; cf. 5867).

(37) In this hearing, his testimony shows he mistakenly thought the 19th Street address was a box (5867-8). It seems clear that the only change the Alien knew of was the one from a building to a post office box which occurred in 1934.

Exhibit "G"—(Continued.)

in the masthead. That they do so is of itself impressive. Minor deviations in this setting are evidences of uncoached and forthright honesty.³⁸ At least in the absence of testimony contradicting him, we cannot disbelieve his version of events. We accordingly conclude that Bridges became connected with the "Waterfront Worker" on or slightly before September 15, 1933, after the former staff had abandoned the enterprise.

There is then, in our view, no connection between the Alien and the prior publication, admittedly sponsored by the M.W.I.U. And there is no deliberate untruth to impugn other sections of his testimony.

2. The Bearing on Affiliation of the Issues of
The "Waterfront Worker" Published after
September 15, 1933

Our finding on the time issue necessitates a segregation not undertaken by the Presiding Inspector of the evidence bearing on the period following September 15, 1933. The fact that there was a change in editorship is explained on this record only by the abandonment of the enterprise by the M.W.I.U. Similarities in form or substance between the issues published before and after Septem-

(38) An episode similar in effect is worth parenthetical note. Bridges, on a matter having no direct bearing on the success of his contentions, flatly contradicted the testimony of his own witness Schmidt, although he had heard and apparently recalled it (5811-2). See also *infra* p. 487, n. 111.

Exhibit "G"—(Continued.)

ber 15 are relevant to the extent only that they tend to show the new staff to have maintained whatever connection with the M.W.I.U. and the Communist Party the old one had.

As has been suggested above, similarities in form have no such tendency. Of such similarities in substance as appear it may be said that they relate almost exclusively to the grievances of the waterfront.³⁹ And insofar as they do so they have but little relevance. In the circumstances disclosed by this record, no overt differences in labor policy could be expected to mark the change in editorship. Sponsorship of the paper at its inception by the M.W.I.U., which was at that time attempting to organize the longshoremen (2578; 5359), led it to dwell upon their grievances. The M.W.I.U., as a "front" organization, advocated the policies of a legitimate labor body (5361-2; P.I. 40-82; Service Brief, p. 22-24). It is accordingly difficult to predicate affiliation on the part of the editors of the "Waterfront Worker" after September 15 upon the fact merely that the papers after that date contain labor items in many respects similar to some of those

(39) The grievances which are the subject of similar comments on the part of the old and the new staff respectively, are largely those enumerated by the Presiding Inspector in discussing the causes of the 1934 strike, namely: the blacklist, the "shape-up", the speed-up and, underlying all, the great enemy, the "Blue Book", or company union (P.I. 84-5). All items which do not deal with such matters and as to which any suggestion of impropriety was made are discussed in the text.

Exhibit "G"—(Continued.)

which appeared before. To establish this point it would be necessary to show policies pursued after the change in editors which were in and of themselves illegitimate. No such showing is made.

The proposed findings state that the "Waterfront Worker" was "an instrument of the M.W.I.U., and of the Communist Party and that it was under the domination and control of those organizations". It is said that there was "favorable treatment of the M.W.I.U., T.U.U.L., and other Communist-sponsored organizations" during the entire period of the paper's existence (P.I. 94).⁴⁰ Reference is also made to "an extremely cooperative attitude with regard to the M.W.I.U." (P.I. 93). The issues published after September 15 do not support these conclusions. They contain no reference to the T.U.U.L. There are fewer and less favorable references to the M.W.I.U. in the period prior to and during the 1934 strike⁴¹ than might have been expected in

(40) It has already been noted that during 1936 the last year of the paper's publication, the M.W.I.U. did not exist. See *supra* p. 384, n. 12.

(41) The total number is six, three of which appear in the issue for September 15, 1933, and one in each of the October 18, 1933, January 29, 1934, and February 12, 1934 issues respectively. Of this total, two are news items concerning strikes outside of San Francisco in which the M.W.I.U. cooperated with I.L.A. longshoremen (Sept. 15, 1933, p. 1; Feb. 12, 1934, p. 1); one deals with a strike where the M.W.I.U. and "longshoremen" cooperated (Sept. 15, 1933, p. 3); two mention strikes by the M.W.I.U. alone (Sept. 15, 1933, p. 2; Oct. 18, 1933, p. 5); and one comprises a denial that the M.W.I.U.

Exhibit "G"—(Continued.)

view of the assistance that organization rendered the I.L.A. in supporting the I.L.A. strike position.⁴² After the end of the strike, but one reference to the M.W.I.U. appears, and that is in a letter to the editors (December 31, 1934 issue, p. 7). Still less appears to support the generality that favorable treatment was accorded "other Communist-sponsored organizations".⁴³

is the sponsor of the "Waterfront Worker" (Jan. 29, 1934, p. 2). Note the reason given by the Alien for emphasizing instances of cooperation between sailors and longshoremen with respect to strikes (5409; 5421 ff.). The remainder of the issues in evidence do not mention the M.W.I.U. at all. (See March 22, 1934; November 19, 1934; and April 13, 1936 issues.)

(42) The record is replete with material on this point, setting forth legitimate reasons for cooperation between the two organizations. See especially 5394-5442 and P.I. 99. And note that the Alien's group foresaw the necessity for enlisting M.W.I.U. support some months before the strike took place (5409). See *infra* p. 420 for discussion of the effect of the cooperation between the I.L.A. and the M.W.I.U. during the strike period.

(43) The Presiding Inspector cites no instances in support of the statement (P.I. 94). Detailed exposition of all references to organizations and other potentially suspect matter cannot be undertaken here. The Service's brief before the Presiding Inspector (pp. 228-32), however, contains an enumeration of instances which we accept as showing the ground on which the charge was deemed to rest. The instances not treated below are here listed: 1. A pacifist editorial containing favorable mention of the Soviet Union (Oct. 18, 1933, p. 6). 2. A favorable article on The Bay Region Congress

Exhibit "G"—(Continued.)

The Presiding Inspector finds indicative of domination by the M.W.I.U. and the Communist Party the "Waterfront Worker's" "Consistent attacks upon the so-called 'reactionary' leaders of the A. F. of L." (P.I. 94). All such attacks, which appear

Against War and Fascism (Jan. 29, 1934, p. 2).
 3. A poem stating that the bosses hate progressives and Communists. This was a contribution to the letters to the editors section (March 22, 1934, p. 4).
 4. An article denouncing terror, beatings etc. directed against employers, and prophesying a day of reckoning before a worker's tribunal (Nov. 19, 1934, p. 5). See the Alien's statement on this (5939).
 5. A paid advertisement for a workers' school which offered, among other things, a course in Communism (Dec. 31, 1934, p. 5). 6. The announcement of a plea by Dimitroff, whom McCuiston identified as a Communist (Service Brief before the Presiding Inspector, p. 231), on the subject of freeing Thaelmann, one of the defendants in the Reichstag fire trial (April 13, 1936, p. 5).

Of these, the last probably appeared after Bridges ceased to take active part in the editing (2562). But it and the remaining five items taken together fall short of demonstrating on the part of the editors a covert attachment to forbidden doctrine. Overt sympathy with Communist philosophy is not sufficient to constitute affiliation. (See p. 378 supra). And these scattered items at most do not approach showing such a state of mind. Moreover, if they did, responsibility for all of them is difficult to trace directly to the Alien in view of the testimony as to the methods by which the paper was edited. In short, this evidence again is even less material than much that is contained in the Alien's own testimony, discussed *infra* pp. 420 ff. on the point of affiliation generally, and passed on, in large part, in the 1939 proceeding.

Exhibit "G"—(Continued.)

in some quantity, purport explicitly to stem from disagreements on union policy. The record does not permit us to conclude that such was not the case or that the policies on the paper's side of the controversy were not legitimate. To hold otherwise would require this Board not only to determine the merits of the labor controversy involved, but to find that the side espoused by the "Waterfront Worker" was so plainly erroneous as to justify a conclusion that the editors could not have taken it in good faith.

Mention should be made of the alleged "Support of the Communist candidates for political office" (P.I. 94). It is more than doubtful that the record establishes this;⁴⁴ but even assuming that it does, the paper itself shows that in the single instance involved (Service Brief, p. 35), the support given the named individuals was based solely upon the platform on which they ran. No element of that platform had any apparent relation to forbidden doctrine (October 18, 1933 issue, p. 2).⁴⁵ The strong-

(44) The candidates supported in the issue for October 18, 1933, p. 2 were not identified as to party affiliation. The only support for the statement that they were Communist candidates was reference to a story in a copy of the "Western Worker" never received in evidence (Gov. Ex. 284 for idf., p. 1); and Bridges had no independent recollection on the matter (5895-7; 5901-6).

(45) Bridges expressed agreement with the platform at this hearing (5898). It listed cash relief; abolition of the vagrancy laws; no evictions; gas, water and electricity for the unemployed, and un-

Exhibit "G"—(Continued.)

est inference that may be drawn from the episode, therefore, is weaker than what Bridges many times acknowledged—that he would not decline to support people with respect to matters on which he was in agreement with them, solely because they were accused of being or were in fact Communists (5897-5904; 6164; cf. 6101; 5819-22; 6084-5).⁴⁶

A somewhat similar question is involved in the charge that the "Waterfront Worker" advised the reading of Communist literature (P.I. 94). Three instances of such advice are set forth in the Service's brief.⁴⁷ They comprise one in which the

employment relief. The evidence relating to the disingenuousness of the Communist Party (P.I. 46-82; Service Brief, p. 22-24) has some bearing here. That organization's concealment of its true aims removes much of the force from any attempted showing that the editors were favorably inclined towards some Communists or towards certain matters Communists approved, since it tends quite as strongly to suggest that the editors were the victims of deception as that they were practitioners of it.

(46) Cf. In re Harry Renton Bridges, file 55973/217, Appendix A to the opinion of January 8, 1940, pp. 124.6. See *infra* p. 426, n. 75.

(47) Service Brief, pp. 36-7. The Presiding Inspector does not refer specifically to any. No additional ones were discovered on examination of all the issues in evidence. Adequate support is thus not found for the Service's sweeping allegation that the paper "continually advised its readers to read Communistic literature including the Western Worker and the Daily Worker, concededly official organs of the Communist Party, and other Communist writings." (*id.* p. 36).

Exhibit "G"—(Continued.)

"Waterfront Worker's" readers are advised to read the "Western Worker" (March 22, 1934, p. 2), another which places the "Western Worker" and "The Daily Worker"⁴⁸ in the category of the "Workers' Press" which subscribers are urged to read (Nov. 19, 1934, p. 5), and a third involving a recommendation of William F. Dunne's⁴⁹ pamphlet on the 1934 strike (Jan. 28, 1935⁵⁰).

The first of these pieces of advice is accompanied by a full exposition of the reasons behind it. They are the same as those given by the Alien at both hearings (2539-41; 6000-2; 6147-9), namely that none of the other newspapers then available printed reliable labor news or, indeed, any labor news at all.⁵¹ So too, the second item clearly shows that the advice to read the named papers was not intended

(48) Both are official organs of the Communist Party.

(49) Dunne was stated on this record to be a Communist official. The Service's contention that an announcement that Dunne was scheduled to speak on the same topic at a "Waterfront Worker" "birthday party" constituted the equivalent of advocating that Communist literature be read, does not merit separate attention (Service Brief, p. 37, n. *).

(50) This issue was in the Service's possession but was not introduced in evidence. It was, however, made the basis for questioning; and the Alien agreed that the issue contained the recommendation (5934).

(51) Bridges partially excepted the New York Times from his statement (2539).

Exhibit "G"—(Continued.)

to convey approval of them qua Communist publications, but was based on an asserted contrast between their truthfulness on labor matters (cf. 5935; 2539-40) and that of the Hearst press. Nothing in this record enables us to pass upon the relative merits of the publications involved. And in any event, the absence of evidence contradicting the Alien's statements and those in the "Waterfront Worker" prevents rejection of the evidence that such advice flowed from legitimate motives, even were the record to show it was predicated on an erroneous view of the facts.

A similar explanation was made of the third item. Bridges stated that Dunne's pamphlet on the 1934 strike was, in the main, accurate.⁵² It was Bridges' position that labor should be advised to read any matter correctly publicizing its exploits. He testified further:

"I am sure, if you will look through the various issues, you will find on occasion we urged that this, that, or the other particular publication be read, because it dealt in some way with the Waterfront, or our general problem." (5935).

We find in these three instances no warrant for concluding that the "Waterfront Worker" advocated the reading of Communist literature generally, or for any purpose other than that stated

(52) He added that he thought there were some inaccuracies (5930), but that it was good enough to advertise and support (5935-6).

Exhibit "G"—(Continued.)

in its own columns and in the Alien's testimony at both hearings. That purpose, to call attention to publications treating accurately labor matters of peculiar concern to longshoremen, we cannot hold to be one which shows that the editors who entertained it maintained the forbidden degree, or any degree, of relationship to the Communist Party.

The Presiding Inspector cites one further ground⁵³ for his proposed finding that the "Water-front Worker" was so involved with proscribed organizations as to implicate Bridges as one of its editors. This is the fact that the paper used as mailing addresses a hall and a post office box each of which was shown to have been rented by a Communist (P.I. 95; 96 n. 87).⁵⁴

This point, initially not a strong one,⁵⁵ attained considerable significance in the proposed findings because of the view there taken of Bridges' explanation as to why the addresses were used (P.I.

(53) Another ground, not here discussed, relates to a period prior to the time when the group with which Bridges collaborated took over the editorship. (P.I. 96, and see *supra* p. 384).

(54) A third address referred to in the proposed findings (830 Market Street) was not used during Bridges' connection with the paper. See *supra* p. 399.

(55) It is clear from the record that these addresses were mailing addresses only and were not used as offices or for any other purposes by the editors (5392-4).

Exhibit "G"—(Continued.)

94-6), namely that he had "enmeshed himself in various contradictions and inconsistencies" (P.I. 95). Bridges' explanation is not intrinsically incredible. He stated in the 1939 hearing (2552; 2556), where no importance seems to have been attached to the matter, and again in this proceeding, that the editors felt it necessary to remain anonymous to escape the wrath of the employers. In this hearing he added that their method of doing so was to use the addresses of persons already completely in the employers' bad graces (5878-83). That such a stratagem should have been used seems possible—even likely—in the circumstances.⁵⁶

The Alien's explanation was thought defective because of a deduction that one of the addresses, the post office box rented by Jackson,⁵⁷ a Com-

(56) Bridges' remark that his messengers to and from these addresses were probably followed by employers' spies (5890-1) is not inconsistent with the explanation given (but cf. P.I. 95, n. 87; Service Brief, p. 37). The record is not clear on the point, since it does not appear that these spies were efficacious during the period when secrecy was thought essential (5890-1). The testimony is clear that the employers did not discover who the editors were during the danger period (2556; 5393). But in any event, a full demonstration that the editors' stratagem was unsuccessful would have been no fair indication that it had not been adopted for the reason stated.

(57) The Alien thought Jackson was repaid for the expense incurred (5886).

Exhibit "G"—(Continued.)

munist (5879-84; 869-70), was adopted⁵⁸ after the necessity for secrecy had disappeared (P.I. 95, n. 87). The box was first rented February 6, 1934 (1193; 5892). Bridges had testified that the editors no longer had great need for concealment after four or five months (5891). The Presiding Inspector found between those statements a discrepancy which can exist only if it is assumed that the Alien did not become connected with the paper in September 1933. We have concluded that he did.⁵⁹ And, in any event, it is circular reasoning to predicate such an assumption on an alleged discrepancy which disappears if the Alien's testimony is accepted.⁶⁰

(58) The editors continued to use this box until 1936 when the paper ceased publication. There is no evidence that Jackson had anything to do with it after its initial rental (1197); and he is stated to have left San Francisco some time before the paper ceased to use the box (5886).

(59) See *supra* pp. 384-402.

(60) Another alleged discrepancy merits only passing attention. The Alien, it was pointed out, testified at one stage of the proceedings that none of the editors had any contact with the mailing addresses (5870; 5889). Just previously he had remembered that Herman Mann, one of the group who aided in putting out the paper, had "helped to rent" the post office box (5868). This is, in strictness, not even a verbal contradiction. Read fairly, moreover, this passage shows that Bridges was confused and thought that the 19th Street address was a box, which confirms his testimony that he knew nothing about it. And his statement about Mann is no more than a hazy recollection that Mann was

Exhibit "G"—(Continued.)

Another ground for disbelieving the explanation was found (P.I. 95, n. 87) in the Alien's statement at the 1939 hearing that the employers and others knew who was editing the paper (2558-60). That statement itself is unidentified as to time; but taken in its context, it plainly refers to the circumstances in which the paper's publication was abandoned in 1936 (2558-60).⁶¹ The testimony is clear that the employers did not know who the editors were during the early months of Bridges' connection with the editing group (2556; 5393). The statement cited thus loses altogether what minor relevance it might have had.⁶²

The Presiding Inspector also finds "The Alien's assertion that he was not aware that the addresses were those of Communists" unconvincing. (P.I. 95). The record does not show that the Alien made such a general assertion. It is revealing to ex-

the member of the group who carried on negotiations to obtain a mailing address—probably the one Jackson rented later.

(61) Another somewhat similar statement, unidentified as to time, appears on p. 2556. But it refers only to suspicions on the part of the employers and is coupled with an assertion that the editors denied their connection and that the employers "would have paid one million dollars to have found out * * *." See also p. 5393 where similar testimony appears at the current hearing.

(62) Plainly, again, even had such an admission been made, the fact that the editors realized their stratagem was not wholly successful could have but little tendency to show that they had not adopted it.

Exhibit "G"—(Continued.)

amine his testimony as to each of the three addresses referred to.

Of these, one was never used by the paper during the time that Bridges was connected with it.⁶³ Nothing in the record suggests that he had any special reason to know who occupied it. When asked whether it was the address of the Needle Trades Union, he replied, "I think so. I am not quite sure," (5867).

The second was the one which was inherited with the paper. Bridges did say that he knew nothing whatever about this address, that he was under the impression that it was a home, not a hall,⁶⁴ that he had never had anything to do with it, and that he did not know why it was finally changed (5870-8).⁶⁵ He also indicated that he had always thought, and still did think, the whole matter unimportant (5877). His testimony on this point is consistent with the evidence bearing on why the addresses were used and how the mail was ob-

(63) See supra pp. 399-400.

(64) It was in fact a hall (Gov. Ex. 219).

(65) Under a misapprehension as to what address was being discussed, he stated at another point:

"I don't recall. I think it was for the purpose of switching it around, and getting a new address, and in that way divorce it from the waterfront, from the M.W.I.U. group * * *"
(5867).

Exhibit "G"—(Continued.)

tained from them.⁶⁶ We do not think it untruthful.

As to the third address, the post office box, the Alien did not profess ignorance. He testified at some length about how and why it was obtained, and it is clear that nowhere in that testimony did he intend to deny that he knew it was rented by a Communist. On the contrary, he asserted that he thought it was, both on direct and on cross-examination (5392-4; 5879-84); although he did not claim to have any very specific recollection about the details.

We do not find the Alien's testimony on the subject of these three addresses unconvincing. Indeed, his statements on the entire subject may be characterized as those of a witness who was making an honest effort to recall what he could about matters which had occurred six or eight years before, about which he did not profess to have had intimate knowledge at the time of their occurrence,⁶⁷ and to which he had attached no importance.

A final point about the addresses remains. The Presiding Inspector states, "even crediting the

(66) See supra p. 400. It is consistent, too, with his obvious lack of knowledge about which addresses were used at what time. See supra p. 401; p. 413, n. 60; and p. 415, n. 65.

(67) It is evidently assumed by the Service that since the Alien was an "editor" of the "paper" he must have had detailed knowledge about the addresses. Such an assumption ignores the testimony about the manner in which the editorial function was carried on by a loose and fluctuating group. See supra p. 381, n. 8.

Exhibit "G"—(Continued.)

Alien's explanation that addresses were used which would avoid discovery of those responsible for the publication of the 'Waterfront Workers', by employers, the use of these addresses demonstrates a close cooperation with Communists and Communist Organizations" (P.I. 95).

Again attention must be called to the fact that, on the view here taken as to the time when the Alien's connection with the paper began, the first address was never used by his group, and the second was taken over with the paper. It seems apparent that the former is wholly irrelevant and the latter scarcely less so. No valid inference of close cooperation flows from mere acquiescence on the part of the Workers' Ex-Service Men's League and Walter Lambert, its secretary, in the continued use of their hall as a receiving point for mail. And that the Alien did not closely cooperate in the matter is clear from his testimony that he never visited the hall and did not know who occupied it.⁶⁸

The manner in which the third address was obtained does indeed show that Jackson cooperated with the group with which the Alien was connected.⁶⁹ He consented to rent a post office box in his name for their use. He did so in furtherance

(68) See supra p. 414 on the credibility of this testimony.

(69) Probably through Herman Mann. See supra p. 413, n. 60.

Exhibit "G"—(Continued.)

of their attempt to deceive a common enemy.⁷⁰ Without entering into extended discussion of the meaning of words, we find that this single minor episode does not constitute such "close cooperation" between Jackson and the editors as will justify drawing any inference unfavorable to the Alien on the question of affiliation.

Beside the scattered items the Presiding Inspector mentioned as pointing to affiliation, there are specific indicia which point the other way.⁷¹ The explicit denial of M.W.I.U. sponsorship has been mentioned and it is thought to be not wholly without weight here (see 5391-2). So also the rapid abandonment of foreign news items and discussions of broader theoretical matters in favor of concentration on local and coastwise matters directly affecting the San Francisco union longshoremen is significant. Finally, the paper taken as a whole conveys an impression quite the opposite of that reflected by analysis of the minutiae upon which

(70) It should be noted that Jackson was the logical choice for this purpose. He was well known as a Communist organizer on the Waterfront and could not possibly suffer as a result of being credited by the employers with responsibility for the paper.

(71) One minor item seems to indicate an attitude at variance with that ascribed to the Communist Party's adherents by this record. An article on the suppression of a speech by an I.L.A. member states: "We laughed when the 'Reds' were chased off the Front but now it is another story * * *." (Jan. 29, 1934 issue, p. 3).

Exhibit "G"—(Continued.)

the Service's case was founded and which were made the basis of the proposed findings. From September 15, 1933, on, it was unquestionably an informal organ only of the I.L.A., which voted confidence in it (6152). Enumeration of the items selected for unfavorable emphasis draws attention from the overwhelming predominance of concern exhibited in the paper's columns for matters of interest only to members of that organization. Infrequent and casual mention of the M.W.I.U., the I.S.U., and other organizations, suspect or otherwise, constitutes an infinitesimal portion of the subject matter treated.⁷² And we cannot conclude that it shows on the part of the editors a purpose to subvert their readers through the medium of a trade union paper which was such in seeming only.

That the paper displayed a militant attitude cannot be questioned, but that its militancy went beyond anything consistent with a legitimate, if embittered, labor viewpoint on the controversies involved in a sharp labor struggle does not appear from the issues in the record. Strident name call-

(72) The Service lists eleven references to organizations deemed suspect. References to the I.L.A. and its activities number in the hundreds. It may be noted, too, that something less than a fair sampling of the paper is available here. Out of a number of issues which undoubtedly surpassed eighty at the most conservative possible estimate, thirteen only were introduced. And all are Government exhibits selected, presumably, because they contained items regarded as indicative of affiliation.

Exhibit "G"—(Continued.)

ing appears in plenty. Incitement of tempers already overheated may have passed the bounds of judgment or taste. But adherence to a broader and deeper philosophy of revolt by violence is not shown.

In sum, the evidence relating to the "Waterfront Worker" convinces us that the Alien's testimony on the matter is consistent and truthful. We find that the group with which he collaborated began to edit the paper sometime just prior to September 15, 1933. We find that, from that time on, the paper was not an organ of the M.W.I.U. or of the Communist Party. And we find in consequence that none of the evidence adduced establishes that the Alien was, by reason of his participation in the editorship of or his activities in connection with the "Waterfront Worker", affiliated to either of those organizations.

We therefore conclude that the parts of the record and the exhibits relating to the "Waterfront Worker" fail to sustain the proposed finding of the Presiding Inspector that Bridges, as one of its editors, was affiliated with the Communist Party. They similarly fall short of establishing that he was affiliated with the M.W.I.U., no matter whether that organization be viewed as a branch of, or a front for, the Communist Party or as a proscribed organization itself.

C. Affiliation—Other Activities, Beliefs, or Associations of Bridges or His Union

The recommended finding of affiliation rested

Exhibit "G"—(Continued.)

heavily but not solely on the "Waterfront Worker". Other incidents pointed out in the Presiding Inspector's report merit some consideration. Perchance, the Presiding Inspector would have attached less weight to them had he reached the findings we have been compelled to adopt on the "Waterfront Worker", namely, that Bridges in his connection with that paper was not connected with the M.W.I.U., and that his testimony in relation to the subject is honest.

In the main the other incidents cluster about the 1934 West Coast marine strike, which began with the longshoremen. Some background here is necessary. The I.L.A., the longshoremen's union of which Bridges was an influential member, was a legitimate union with legitimate grievances: The strike was legitimately directed to removing the grievances. It did. (4483-5; 5345-58; 5361; 4488-9; 5364; 5369; 5374-7; 5394-5; 5401). That much is unquestioned. It is urged, however, that mutual assistance between the I.L.A. and the M.W.I.U. during the strike shows Bridges' affiliation to the M.W.I.U. We think not.

The I.L.A. went on strike on a coastwise basis May 9, 1934 (5397). Plainly enough, a longshoreman strike could not hope for success without aid from the seamen (6134). Two seamen's unions were operating on the West Coast: the International Seamen's Union of America, with a membership of from four to five hundred, and the M.W.I.U., with a membership of around two thousand (5398; cf.

Exhibit "G"—(Continued.)

1549-50; 7124). The I.S.U. refused to support the strike and urged its members to do longshoreman work to help break the strike (6133). Later, circumstances involving a lockout forced the I.S.U. into the strike (5399). Prior to the strike, the M.W.I.U. informed the I.L.A. of its intended support and that support materialized. The two unions established joint picket lines and soup kitchens (5401). The collaboration was on a coastwise basis (5397-8). Bridges participated in this union activity to the extent that he was a power in his local in San Francisco (5411; 5437-9; 5443). Yet, assuming for the sake of brevity that all the activity of his union, here, is to be attributed to Bridges, we see no evidence of affiliation.

Whatever may have been the extent to which the M.W.I.U., at most a Communist front organization, was dominated by the Communist Party, it was undoubtedly in its operating aspects and to the bulk of its members a genuine and virile labor union (2582-3; 7040). As a labor union, the I.L.A. accepted its support. So too, it accepted the support of other labor unions—the Teamsters, the Machinists, the Boilermakers, the licensed radio, deck, and engine room officers (5437; 5405-6). The putative, hidden, ultimate aims of one participant in a clear union situation supply no warrant under the statute to pass judgment on the wisdom of the union policy of all other participants.

That the aims of Bridges, personally, were legiti-

Exhibit "G"—(Continued.)

mate union aims is rather clearly shown by the evidence relating to his solicitation of members for the M.W.I.U. When, at the beginning of the strike, the I.S.U. was hostile and not accepting unorganized seamen for membership (6133), Bridges urged seamen to join the friendly M.W.I.U., but only after the I.S.U. refused to accept them (2579). "Our only concern," says Bridges, "[was] in getting the workers at that time into an organization to win our strike." (2573). When the I.S.U. changed its attitude, joined the strike (5399) and accepted unorganized seamen, Bridges then took the position that the seamen should join that union (6135-6). Later Bridges not only recommended that unorganized seamen join the I.S.U., but was instrumental in having existing members of the M.W.I.U. go over to the I.S.U. This finally resulted in so many seamen leaving the M.W.I.U. that it was disbanded toward the end of 1935. (2584-5).

In this connection, it is significant, too, that Bridges, although frequently urged to do so by Jackson, an M.W.I.U. organizer, never joined the M.W.I.U. and never urged longshoremen to join it (5754; 6131). Yet, the M.W.I.U. was organized for some time prior to the start of the I.L.A. in San Francisco and its membership was open to longshoremen (Gov. Ex. 242; 5940-2; Gov. Ex. 276).

Here, certainly, was no continuous bond between the M.W.I.U. and Bridges justifying mutual ex-

Exhibit "G"—(Continued.)

pectations of support. Rather, Bridges and his union accepted M.W.I.U. support when it was useful to their union ends, helped the M.W.I.U. to get members only in order to help themselves, refused M.W.I.U. support when in their judgment such support was not helpful to their union ends,⁷³ and finally, indeed, assisted the M.W.I.U. only to its grave.

The Communist Party and its West Coast publication, the "Western Worker", supported the

(73) Bridges' I.L.A. local voted to seat M.W.I.U. delegates on the Joint Marine Strike Committee, a committee with Bridges as Chairman, consisting of representatives of the striking unions. On the protest of others, the M.W.I.U. delegates withdrew. (5951-2). Later in the strike, however, the I.L.A. approved a resolution of the San Francisco Labor Council which denounced the Communists and the M.W.I.U. as a Communist organization and advised the I.L.A. to disavow any connection with the M.W.I.U. This action of his union was binding on Bridges and he followed it. (6188-9; 6192-3; 5954-5). Personally, Bridges had, prior to the adoption and approval of the resolution, opposed it (7388-9; P.I. 99). Bridges also avows that when Darcy, a Communist Party member, was at I.L.A. union headquarters on another matter, he told Darcy of the pendency of the Labor Council's resolution (5956). In neither Bridges' personal position on the resolution, nor in his volunteering to Darcy the fact of its pendency is there any evidence of a bond of affiliation. The former, on this record, was no more than his judgment as a union man and delegate on a union matter. The latter is isolated and too equivocal in its context seriously to tend to support a finding of affiliation.

Exhibit "G"—(Continued.)

strike (5853);⁷⁴ and in the writings of apologists for that Party its part in the strike is made larger by unsupported insinuation of association with the San Francisco labor leader, Bridges. See William Z. Foster's "From Bryan to Stalin", Gov. Ex. 135, p. 260; William F. Dunne's "The Great San Francisco General Strike", Gov. Ex. 191, pp. 5, 8-9, 46, 47; and the "Party Organizer" for August 1934, Gov. Ex. 236, pp. 1-2. But the only incident in the record which even tends to connect Bridges with such support is the acceptance by the I.L.A. Strike Committee, of which Bridges was Chairman, of an offer by the "Western Worker" to donate the use of its printing facilities to the extent of printing a daily "I.L.A. Strike Bulletin". The I.L.A. Bulletin was not part of the "Western Worker"; the material printed was supplied by the I.L.A.; and the "Western Worker" had no editorial supervision over it. (5786; 5789). Here again the I.L.A. or Bridges accepted such unsought help toward winning the strike as was offered—but as we have seen only for the moment. Expectation by Bridges and the I.L.A. that it should be forthcoming did not precede the "Western Worker's" offer, and compensatory return by the I.L.A., if expected by

(74) So did the "Catholic Leader", among other papers (6140).

Exhibit "G"—(Continued.)

the Communists, did not follow acceptance of the offer.⁷⁵

Finally, in the absence of some substantial evidence pointing toward affiliation or membership, and there appears to be none in this record, the few re-

(75) The same attitude of accepting help for his union but only for the sake of his union is expressed by Bridges in response to a question as to what was his position on printing a Communist Party release in a union paper:

"As I understand, the question was my position in regard to printing official Communist releases. I still say it might depend. For example, if—there was a lot of trouble up there at that time, a lot of action and tie-ups. I believe that if the Communist party happened to send in a statement saying that they would do everything they could to support the particular dispute at that time in behalf of the union position, my position would be that I wouldn't have any great objection to seeing that carried in the union paper."

He ruefully adds, "That would be my position even now, maybe." (5501).

Undeviatingly, Bridges' position is the same on the question of voting for a political candidate whom he might know to be a Communist:

"The question of support only goes to whether he is a unionist or not. If he is a bad unionist, we don't care what he is, we are against him; if he is a good one, we don't care what he is, we are for him. His first allegiance must be for the union." (6164).

Such a position could be criticized, were it relevant, as too narrow in loyalty. But it remains the fact that a cavalier approach to Communists which cares not whether a man is a Communist or not shows no sympathetic bond of affiliation.

Exhibit "G"—(Continued.)

maining scattered items claimed to bear on affiliation show nothing in and of themselves. That Bridges on one occasion praised the American Youth Congress (Gov. Ex. 134); that on another he attacked "red-baiters" in the belief that they "are usually agents of the bosses and are the enemies of true trade unionists and should be treated with distrust" (392-3; P.I. 136-7, but cf. P.I. 165); that he might have consistently attacked so-called "reactionary" leaders of the A. F. of L. (P.I. 94); that amongst his large acquaintance, he knew and talked with some Communists (5888; 5956-66; 6076-91)—these items on the periphery of evidence would be consistent with a picture of affiliation or membership drawn in the main by other evidence of substance. But, as they stand in the record, the inferences to be drawn are too many and varied to permit selection of the one inference, affiliation.⁷⁶ There are as many

(76) So too, if Bridges had made the passing remark that the only way a young fellow could get ahead in the labor movement today was to join the Communist Party; or if he had consulted with Communists on the contents of a telegram involving a labor union matter. However, while they are of no great materiality, it should be noted that neither the remark, nor the consultation, is, in our view, established by the record. The remark is testified to by the witness Barlow who claims to have heard it in the presence of his father in a conversation occurring on the stairs of the hall at the end of a day's session of the Maritime Federation of the Pacific convention in 1935. (7130-3). Bridges does not recall the incident and feels sure he never made

Exhibit "G"—(Continued.)

items that look the other way. Bridges supported "Ham and Eggs", a bitterly fought political issue in California. The Communist Party was opposed to it. (6169). In the last election, Bridges supported the position taken by John L. Lewis—contrary to the attitude of the Communist Party (6169). He differed with Walter Stack, a prominent Communist, on the question of affiliating the Maritime Federation of the Pacific (apparently to the C. I. O.). Stack opposed it. Bridges was for it (6163-4). A

the remark (7361). If made, the remark could have been facetious or ironic as well as serious. Barlow as a young man curious about Communism might be more apt to remember the remark than Bridges. Yet four years after the event in 1939, at the time of the previous hearing, Barlow, when interviewed by agents of the Federal Government had no information in reference to Bridges as a Communist (7140-1); six years after the event, he recalls no ambiguous remark. Incredible, too, is his testimony under oath on the stand, that in the whole period between the 1939 interview and the giving of his testimony here in response to a subpoena he was not again interviewed by agents of the Government in reference to his knowledge on Bridges (7141-2). The Service could learn what was in Barlow's mind only from Barlow's lips. We find that the making of the remark in any serious vein is not established by the preponderance of evidence.

The occurrence involving consultation on a telegram rests upon the testimony of the Lovelaces, Dawn, the wife, who testified, and Richard, the husband, now deceased, whose testimony is by way of sworn affidavit. Dawn in August 1935 was a rank and file Communist in Portland and a member of the American Newspaper Guild, and Workers Alliance (1233; 1238; 1280; 1282; 1290; 1355-6). Rich-

Exhibit "G"—(Continued.)

committee of which Bridges was chairman investigated and rejected, during the 1934 strike, an offer of legal assistance from the International Labor Defense (5917-21), found by the Presiding Inspector (P.I. 71) to be a Communist organization whose "immediate purpose is to assist and defend Communists who encounter legal difficulties by providing bail, lawyers, and other assistance." Bridges was opposed to the position of the M.W.I.U. that

ard was a local Portland official of the Communist Party, being a member of the Portland Section Executive Committee (1266); he, also, was a member of the Workers Alliance (1355). Bridges came to their apartment in August 1935 in the company of Hugh Adams, a longshoreman, but known to them as a Communist, and two other members of the Maritime Federation of the Pacific (a maritime union organization) in San Francisco. (1240; 1276; 1249; 1290). Adams introduced Bridges to the Lovelaces (1240). According to Dawn, Adams asked for Matt Meehan, then an important official in Bridges' union, the I.L.A. (1240-1; 1285; 1291-2). According to Richard, the visiting group sought James A. Murphy, Section Organizer of the Portland Section of the Communist Party, and then or shortly prior thereto Secretary of the National Lumber Workers Union, who lived in the same apartment house as the Lovelaces (1276; 1335). Dawn, in an aside to Adams, rebuked him for bringing Bridges to the apartment of open Communists and for looking for Matt Meehan there since "There was no reason for it." (1285, 1282). Some hours later, Murphy, in response to a note left by Richard, joined the group (1242; 1245; 1276-7). The intervening time was occupied by Dawn's typing, at Bridges' request, notes he dictated on a Maritime Conference in Washington, D. C., from which he had just returned, and by sociable inter-

Exhibit "G"—(Continued.)

longshoremment, teamsters, engineers and seamen should all be in one union (2578-9). He refused Jackson's invitations to join the M.W.I.U. (5754). His stated beliefs are in favor of collaboration between capital and labor (2570) and opposed to the Communist policy of fomenting strikes (P.I. 46; 212; Gov. Ex. 239, pp. 60-3). Bridges believes in arbitration and direct negotiation to settle labor differences with the strike used only as a last resort (5519-23; 5527; 5530-2). That belief, according to other wit-

course concerning his recent experiences in the East (1292; 1244-5; 1276). When Murphy arrived, Bridges discussed with him and Lovelace the contents of a telegram that Bridges should send to Henry Schmidt, President of the I.L.A. in San Francisco, on the tactics to be pursued to avoid an expected lockout in San Francisco (1276-7; 1245-6).

Bridges recalls the incident, but his version differs. He was attending a District Executive Board meeting in Portland, shortly after his return to the West Coast from a Maritime Conference in Washington. Because he wished to dictate his notes on this conference before leaving Portland the next morning, Hugh Adams took him to Dawn Lovelace to have this work done. Bridges and Adams were accompanied by a couple of other union members. (5473-4). Bridges has no recollection of meeting either Richard Lovelace or James Murphy on this occasion (5474-5). While in Portland, Bridges testifies, he sent a telegram concerned with an issue that was discussed at the Executive Board meeting and directed the union in San Francisco to participate in a vote dealing with boycotting cargoes going to British Columbia because of a strike there in progress (5475-6). The telegram, Bridges says, was sent to Jack Creary, not to Henry Schmidt (5475).

Inherently, the Lovelace version is less plausible than Bridges'. True, the Lovelaces, except to the

Exhibit "G"—(Continued.)

nesses, has been practiced by Bridges with consistency (4572-7; 4908-9).⁷⁷

extent noted, corroborate each other. As Dawn succinctly puts it, "We always worked together (1299) * * * As long as my husband had given a statement to the FBI, why it was agreeable with me that I should corroborate his statement (1304)." Yet Bridges could not have expected to find Meehan at the Lovelaces'; and, as an expert in San Francisco maritime matters, he is unlikely to have sought the advice of Murphy, a local Portland Communist official versed, as far as this record shows, only in lumber. In contrast Bridges' version is reasonable. He wished to dictate, before he left Portland the following morning, a memorandum on a conference he had recently attended. It is understandable that he might have asked some one of his associates where he could find help in this matter. Admittedly, Adams was acquainted with the Lovelaces and knew that Dawn Lovelace could do this work for Bridges. The fact that Bridges very frankly admits going to the Lovelace apartment and dictating his memorandum on the Washington conference while forgetting many of the incidental details lends weight to the conclusion that that was his purpose in going there. Bridges failed even to remember whether Richard Lovelace was present. There is no reason to believe that Richard Lovelace was not present nor is there any reason for Bridges to be equivocal on this point since he had admitted his own presence at the apartment. We conclude that the Lovelace version is not established by the preponderance of the evidence.

(77) The Alien urges that the issue of affiliation is for the most part, if not entirely, res judicata because of the decision in the 1939 Bridges deportation proceeding. True, in many instances, the present record goes into the same facts brought out in the 1939 proceeding. The association of

Exhibit "G"—(Continued.)

D. Affiliation—Conclusion

We have reviewed the evidence as bits making up an attempted complete mosaic, yet evaluating each particle so that its true worth might stand out in the whole with chiseled clarity. The picture fails to materialize. We can find on this record only that affiliation is not established.

Bridges with the M.W.I.U. during the 1934 strike (Alien Ex. 12, pp. 102-3), the aid offered to Bridges' union by the International Labor Defense (Alien Ex. 12, p. 103), the aid given by the Communist paper, the "Western Worker", in the 1934 strike (Alien Ex. 12, pp. 103-4), Bridges' association with Communists (Alien Ex. 12, 105, 124) and non-discrimination of Bridges against Communists in labor unions (Alien Ex. 12, p. 125) were all considered when the decision, favorable to Bridges, in the 1939 case was reached. Then, no implications adverse to the Alien were drawn from these incidents. The technical legal rules of *res judicata* may not apply in an administrative proceeding of this character [Pearson v. Williams, 202 U. S. 281; Flynn ex rel. Han Loy Wong v. Ward, 95 F. (2d) 742 (C.C.A. 1st, 1938)]. Yet there is a serious question whether an administrative agency should relitigate time after time the same factual issues in the same type of proceeding [Ex parte Gagliardi, 284 Fed. 190 (D. C. W. D. Wash. N. D. 1922); In re Barratt's Appeal, 14 App. D. C. 255 (1899); Wong Chow Gin v. Cahill, 79 F. (2d) 854 (C.C.A. 9th, 1935); Wong Kam Chong v. United States, 111 F. (2d) 707 (C.C.A. 9th, 1940); In re Ondrei Kimmen, 55906/451, Board of Review, March 20, 1940]. We do not pass on this point, however, since our appraisal of the evidence makes it unnecessary.

Exhibit "G"—(Continued.)

II. MEMBERSHIP

A. James D. O'Neil

James D. O'Neil, produced by the Service, was a most tantalizing witness. Speculation as to the ultimate motives for his testimony may fill many fascinating tomorrows. But on the record before us, decision on his testimony both on and off the stand is relatively simple. His testimony off the stand is not to be heard, and when heard his testimony on and off the stand cannot be believed.

At the outset of O'Neil's testimony, counsel for the Service immediately claimed O'Neil to be hostile and questioned him on failure to answer subpoenas (2263-70).

During the course of the examination, counsel read to O'Neil a statement alleged to have been made by him to agents of the F.B.I. in an interview on October 7, 1940 (2280 ff.). The statement, later admitted in evidence (Gov. Ex. 255), reads, so far as material to the substantive issues in this proceeding, as follows:

"I joined the Communist Party * * *
under the name of Ben Harrison.

* * *

"On another occasion I walked into Bridges' office, it always being my privilege to do so after first having assured myself that he was alone, and on his desk was a new Party book, which had just been issued and into which Bridges was putting assessment stamps. This was about

Exhibit "G"—(Continued.)

two o'clock in the afternoon in Bridges' office in the Balboa Building, 593 Market, Room 509, in 1937. I expressed amazement that he was doing this openly with the book in plain view on top of his desk; however, he nonchalantly continued to put the stamps in place and then returned the book to his pocket. I knew this was a Communist Party book because I had one myself and it was just like it. It was the general practice to pay your dues to the Communist Party dues collector and, in return to receive stamps which he tore off from a block and which you inserted in your book at your leisure. There is no doubt in my mind but what that was Bridges' membership book in the Communist Party.

. . .

"On several occasions Bridges reminded me that I had not been attending [Communist] Party meetings and asked me, 'What's the score?'

. . .

"It is my belief that Bridges never at any time attended any Communist Party meetings. He might have met with one or two of the trusted and highest officials of the Party, as that would be all that would be necessary to conduct any business he had with them.

"Bridges never stated to me that he was a member of the Communist Party. It was always

Exhibit "G"—(Continued.)

tacitly understood and assumed that such was the case. . . .

* * *

" . . . Bridges said that fraction meetings had been conducted in the room [Bridges' hotel room] . . . By this he meant top fraction meetings of the Communist Party. . . "

It was further contended and avowed by counsel for the Service that O'Neil had made certain statements to agents of the Service and of the F.B.I. in an interview at the F.B.I. offices on April 22, 1941, a few days before O'Neil testified. Such alleged statements of O'Neil were read off (2322 ff.; 2342), sentence by sentence, by counsel for the Service, and so far as material to the substantive issues here, went as follows:

"Harry Bridges is a Communist, and I saw him paste stamps in his book with his name in the book. It was his right, his own name." (2326-7)

* * *

"Yes, I walked into Harry Bridges' office, and I said, 'You g. d. fool!' He was relaxed and with his feet on the desk, and he said, 'I did not have time today.' I said, 'You g. d. fool! You are nuts!' And he said, 'I am O. K.' It was under the name of Dorgan. That is where you fellows are wrong. It was an Irish name. He was very proud of it." (2341-4)

* * *

"I don't want to testify and will not testify,

• Exhibit "G"—(Continued.)

but I have actual visual knowledge of his membership, and I know he was a member of the Communist Party. I have discussed this with him and Harry would discuss the matter with me. He would discuss the Party line and sometimes he would digress from it." (2530-1)

"You have a lot of witnesses testifying who do not know what a real top fraction meeting is. A top fraction consisted of Bridges, Gladstein, Schneidermann." (2351-2)

* * *

"I have attended at least five Communist Party meetings with Bridges and Hanoff was at all of these. . . The meetings I attended with Bridges were closed Communist Party meetings." (2357; 2358; 2360)

O'Neil denied making, and denied the truth of, all of the statements we have quoted from both interviews, with the exception of the sentence, "It is my belief that Bridges never at any time attended any Communist Party meetings."

Gertrude Segerstrom, an F.B.I. stenographer, testified as to the contents of the statement of October 7th which she states she took on direct dictation from O'Neil in the presence of F.B.I. agents Smith and Cassidy (2400 ff.). Major Schofield, head of the Service, testified that the following occurred at the April 22nd interview in the presence of himself, Service counsel Del Guercio, and Assistant Director Connelley and Agent Cassidy of the F.B.I. (2322; 3; 4809; 4810):

Exhibit "G"—(Continued.)

"He [O'Neil] was asked whether he had been a Communist and stated he had been a member of the Communist Party and had been active in its behalf here in San Francisco. He was asked whether or not Harry Bridges was a member of the Communist Party, and he said he was. He then said and volunteered this: That he, O'Neil, so far as he knew, was the only man who had visual evidence of the fact that Bridges was a Communist. We asked him what he meant by that, and he said that on one occasion he had actually seen Bridges pasting dues stamps in Bridges' membership book in the Communist Party."

Counsel for the Alien have urged that the reception of the Segerstrom and Schofield evidence, even for the purpose of impeachment would be error, and urge more strongly that in any event such evidence cannot be considered as affirmative, probative evidence in this proceeding. Preliminary to these questions we are forced to consider whether O'Neil did make the statements at the two interviews testified to by Segerstrom and Major Schofield, for if he did not, there are no prior, contradictory statements by O'Neil for consideration. And if he did not the Segerstrom-Schofield testimony was a fabrication which, at the least, would plainly not aid the Service's case.

On that preliminary question, it is immediately noticeable that the alleged O'Neil statements of October 7th are not internally consistent; the alleged

Exhibit "G"—(Continued.)

O'Neil statements of April 22nd are not internally consistent; and finally, the statements of October 7th and April 22nd are not consistent with each other. Fabrication would hardly be so slipshod. In the October 7th interview O'Neil allegedly stated his belief that "Bridges never at any time attended any Communist Party meetings." Still in the same statement, Bridges told O'Neil that Party meetings in which he (Bridges) had clearly participated (2411) were held in Bridges' hotel room. When we turn to the April 22nd interview on this point, confusion grows. There, it is claimed by the Service that O'Neil stated that a real top fraction Communist Party meeting consisted of Bridges and others (2351-2), and that he (O'Neil) had "attended at least five Communist Party meetings with Bridges" (2358-9).

Similarly, in the October 7th statement, O'Neil did not see the name in Bridges' Party membership book on the occasion when he found Bridges in his office pasting stamps in the book (2407); but in the April 22nd interview, it is claimed that O'Neil, speaking of the same occasion, stated both that the name in the book was "his.[Bridges'] right, his own name name" (2326-7), and that "it was under the name of Dorgan" (2342-3).⁷⁸

Yet, again, on the point of whether Bridges ever

(78) Bridges' mother's maiden name was Doigen (10). It is possible that the name "Dorgan" as quoted in the text is the result of an error in transcription, although none is claimed by counsel. In any event, neither "Dorgan" nor Doigan" constitutes any part of Bridges' own name (5338).

Exhibit "G"—(Continued.)

revealed to O'Neil his membership in the Communist Party, there is contradiction. We have O'Neil stating in the October 7th interview that:

"Bridges never stated to me that he was a member of the Communist Party. It was always tacitly understood and assumed that such was the case." (2408)

But we have O'Neil purportedly stating in the April 22nd meeting that he "knew" Bridges was a member of the Party and that he discussed Bridges' membership in the Party with Bridges (2351).

Such glaring inconsistencies and contradictions in the substance of the O'Neil statements as claimed by the Service tend strongly to indicate that the statements were not manufactured by the Service or any other agents of the government.

The fact of inconsistencies and contradictions far outweighs in our minds what might otherwise have been the impressive manner in which O'Neil in a lengthy examination under close and persistent questioning fails to break down, but in a consistently natural way stands by his complicated, yet in and of itself, plausible explanation of the statements of October 7th and April 22nd.⁷⁹

(79) O'Neil denies that he dictated any statement to Segerstrom (2282-3). He admits that a stenographer was present at both interviews taking notes of running conversations (2283; 2353). However, it is his position that the October 7th statement is a garbled, composite summary of six separate interviews with the F.B.I., including the April 22nd interview, founded on questions put to

Exhibit "G"—(Continued.)

In addition, Segerstrom and Major Schofield were highly credible witnesses. Segerstrom testified in convincing detail as to the circumstances of the Oc-

him, but not faithful, in many instances, in reproducing his answers. To put it in his own words, O'Neil testified (2387-8):

"In the course of the meeting, which was read as a statement, paragraph by paragraph, the questions that were asked as now appear to be questions that were asked me corroborated by myself. Let me see! That was, I believe, the third meeting, if I am not mistaken. Two took place at the radio station. The third one took place at 111 Sutter. There were two subsequent meetings at the house. On that occasion I was called on the phone and asked if I would come down to 111 Sutter, and I felt and I said that I felt I had nothing to add to what had already been said. Well, they came out to the house anyway on two different occasions. I couldn't say exactly how long, but I believe that one of the sessions up there when they were going over names, calling up names of men and women both, who were prominent in the labor movement. 'Did I know that they were affiliated with the Communist Party?' 'Did I ever attend Communist meetings with them?' The answer was that I had not. 'Well, so and so' and somebody would be brought in who I might or might not know. When I say 'brought in', their name brought in and I was told that they had said that I had been at such meetings.

"Well, I stated that they were meetings of Labor's Non-Partisan League, they were meetings of the Maritime Federation of the Pacific, they were meetings of the CIO Council. The meetings were a great many varied labor groups, at which I was present and in which

Exhibit "G"—(Continued.)

tober 7th interview and minor corrections in her stenographic notes made upon her reading back O'Neil's dictation (2411-12). Major Schofield was

these figures were present because, for instance, I believe at that time Henry Schmidt was the President of the Local of the ILA at one time and later on of the ILWU. Certainly I attended such meetings but they were not Communist meetings. And I so stated. And yet time and again, you understand, once a question was answered that wasn't the end of it. It was brought up at the subsequent meeting, or possibly the same evening with the statement that 'this man' or 'that man' was reported to have seen me, or 'It was reported that you were seen there, Jim, and it was a Communist meeting.' That is why this statement this morning is a composite picture of the entire six interviews and not of any one particular one."

O'Neil reiterates this explanation in plausible detail and with reference to particular items (2281-2; 2288; 2290; 2293; 2302; 2303-4; 2311-12, 2398-9).

Some significance might have been attributed to the fact that O'Neil in many instances denies neutral details of the statements, and, further in some instances, consistently with his explanation does not deny having stated certain neutral details of the statement but denies stating such details at the October 7th or April 22nd interview. See 2292, 2294-5 (denies stating various details as to how he obtained the editorship of the "Voice of the Federation" on the ground that he doesn't believe he went into such detail on the occasion claimed); 2296 (denies stating that he succeeded Henry Schrimpf as editor of the "Voice"); 2299-2300 (on the ground that he always had Lundeborg's enmity, denies stating that his editorship of the "Voice" incurred it); 2300 (denies stating that he was removed from the editorship without charges being

Exhibit "G"—(Continued.)

patently bluff and honest. A more subtle and elusive witness would have sought to avoid frank expression of his concept of the case and his duty toward it.⁸⁰

filed; states that he might have said this at another interview); 2301 (denies stating that he answered "practically all of Bridges' mail" etc.); 2304 (denies stating that Bridges would call him to tell him what Bridges wanted emphasized); 2318 (denies stating that a microphone had been installed in Bridges' hotel room; states that such a statement appeared in the "Voice" but not as a statement from him); 2338 (denies that he was asked whether an alien Communist should be deported and that he answered in the affirmative); 2344-5 (denies stating he began to work for Bridges in 1937 or 1938); 2346 (denies that he was asked whether he had made a statement to anybody and that he answered that Bridges did not know of his statement to the F.B.I.); 2348-9 (denies that he was asked whether George Wilson is a Communist and that he answered in the negative); 2359 (on the ground that he has met Mickey Orton, he denies that he stated or could have stated that he had not met Mickey Orton); 2360 (denies stating that he never attended meetings with Pritchett or Orton); 2362-3 (on the ground that the subject wasn't discussed at the April 22nd interview, denies stating at that interview details as to his job as publicity director and his salary).

(80) On cross-examination Major Schofield testified, in part, as follows:

Q. Well now, in your position as Special Assistant to the Attorney General is it or is it not the fact that you may be called on by the Attorney General to give your recommendations or your views with respect to a particular case?

A. Oh, he could. It isn't customary, but he could.

Q. And, therefore, it is possible that the Attorney General * * * may call on you for your views

Exhibit "G"—(Continued.)

For the foregoing reasons, we accept the Presiding Inspector's recommendation that we find that O'Neil did make to Segerstrom and Major Schofield the statements attributed to him by these witnesses. We have believed it fitting, however, to examine that recommendation closely and thoroughly. It would scarcely be appropriate for this Board, which in many practical aspects is a part of the Service and is all aspects part of the Department, cursorily to assume the making of the statements merely because an alternative decision might involve a serious charge of maldoing by other employees of the same Department.

There remain three questions. First, was the testimony of Major Schofield and Segerstrom, proving O'Neil's prior statements to them, admissible as impeachment evidence; second, was such testimony admissible as affirmative, probative evidence in

or your opinions with respect to whether or not there should be a deportation order issued against Harry Bridges?

A. Well, he might. But if he didn't I would think it my duty to give him my views.

Q. I see. And you have pretty definite views on this matter, don't you, Major?

A. I do, based upon the evidence that I have examined and testimony that I have heard and the results of the investigation that has been made." (4819-20).

* * *

"Q. Major, do you consider it in accordance with the American tradition with respect to the judicial process for you, as the Chief of the Service, prosecuting this case, to play a role, give any view, express any opinion or exert any influence

Exhibit "G"—(Continued.)

support of the Service's case; and third, if it was so admissible, are the prior statements of O'Neil to be credited.

While the matter is not free from doubt, we hold that the prior statements are admissible for purposes of impeachment. It is recognized that the rule in judicial proceedings, criminal and civil alike, is plainly otherwise. Here there was no surprise; neither was there any testimony by O'Neil affirmatively damaging to the Service's case.⁸¹ In the absence of both surprise and affirmatively damaging evidence, prior contradictory statements for im-

for the purpose of affecting the final decision of this case?

A. Well, I don't know what you mean by that. I think it is my duty, yes, or I wouldn't be doing it. I think it is my duty to do everything I can to see that the evidence is presented here to support my conviction that Harry Bridges is a Communist, is one of the leading Communists of the United States. Yes.

Q. And to exert every influence within your power upon the Attorney General or anyone else to secure a decision in accordance with that view?

A. Every legitimate influence, except that I wouldn't include the Attorney General, no. I mean, I would prefer him to make up his own mind after he reads the record.

Q. But you would not bar yourself from expressing your views or exerting your influence in the making of that decision? * * *

A. * * * I wouldn't bar myself, you say?

Q. Yes.

A. No, I would regard it my duty to give him what I think the evidence shows." (4837-8)

(80) According to the Service's contention, its representatives had been advised by O'Neil a few

Exhibit "G"—(Continued.)

peachment of one's own witness are generally rejected in the courts.⁸² And there is some force to the Alien's contention that to permit impeachment of O'Neil is to negative a complete blank. Cf. *Kuhn et al v. United States*, 24 F. (2d) 910, 913, (C.C.A. 9th, 1928); cert. denied 278 U. S. 605. Yet we are not bound by all judicial rules of evidence. The judicial rule of rejection is based in large part on the serious danger of prejudice in the minds of a lay jury. Trained lawyers passing on the evidence here can be expected to distinguish sharply between impeachment evidence and affirmative probative evidence. Finally, while there was on affirmative evidence to impeach here, we believe the Service was entitled to the introduction of the Schofield-Segerstrom testimony for the purpose of removing the unfavorable inference, not easily isolated and rejected in any mind, legal or lay, that might possibly have arisen from the Service's not proving the making of the prior contradictory statements claimed. Cf. *Griffin Wheel Co. v. Smith*, 173 Fed.

days before the hearing that he would not testify and that if he were forced to testify the Service "would be sorry" (4811; 4813). At the very start of O'Neil's testimony, the Service claimed him hostile (2263-70). O'Neil's testimony on the stand consisted, in substance, of denials that he had stated or knew any circumstances connecting Bridges with the Communist Party.

(82) *Hickory v. United States*, 151 U. S. 303 (1894); *In re De Gottardi*, 114 Fed. 328 (S. D. Cal., 1902; *Randazzo et al. v. United States*, 300 Fed. 794 (C.C.A. 8th, 1924); *Arine v. United States*, 10 F. (2d) 778 (C.C.A. 9th, 1926); *Sullivan v. United*

Exhibit "G"—(Continued.)

245, 248 (C.C.A. 9th, 1909). Having claimed contradictory statements, the Service was entitled to prove them to avoid any possible inference of sharp practice or fabrication.

The Presiding Inspector chose, however, to consider the testimony as affirmative, probative evidence.⁸³ This was error.

Such use of the testimony was improper under the published Departmental Regulations which govern this deportation proceeding. The Regulations carefully delimit the field of use of a prior state-

States, 28 F. (2d) 147 (C.C.A. 9th, 1928); *Young v. United States*, 97 F. (2d) 200 (C.C.A. 5th, 1938); *People v. Jacobs*, 49 Cal. 384 (1874); *State v. Stephens*, 116 La. 36 (1906); *Sturgis v. State*, 2 Okla. Cr. 362 (1909); *Beach v. The State*, 138 Ga. 265 (1912); *Travelers Ins. Co. v. Hermann*, 154 Md. 171 (1927); *State to use of Chenoweth et al. v. Baltimore Contracting Co.*, 177 Md. 1 (1939). Many of the cases require both surprise and affirmatively damaging evidence before impeachment of one's own witness, by proof of prior contradictory statements, is permitted. *Tacoma Ry. & Power Co. v. Hays*, 110 Fed. 496 (C.C.A. 9th, 1901); *Sneed et al. v. United States*, 298 Fed. 911 (C.C.A. 5th, 1924); cert. denied 265 U. S. 590; *Louisiana Ry. & Nav. Co. v. McGlory*, 20 F. (2d) 545 (C.C.A. 5th, 1927), cert. denied 275 U. S. 570; *Selover et al. v. Bryant Adm'r.*, 54 Minn. 434 (1893); *State v. D'Adams*, 84 N. J. L. 386 (1913); *Penhansky v. Drake Realty Construction Co.*, 109 Neb. 120 (1922). Some cases reject such evidence even when surprise and affirmatively damaging evidence are both present. *Murray et al. v. Third Nat. Bank of St. Louis*, 234 Fed. 481 (C.C.A. 6th, 1916); *Hurley v. The State*, 46 Ohio St. 320 (1888).

(83) The original view of the Presiding Inspec-

Exhibit "G"—(Continued.)

ment as evidence in deportation proceedings both as to the necessity for use of the statement and the guaranties that must be present in the statement before its use as evidence is permitted.⁸⁴ The testimony here does not show requisite necessity and guaranty.

The Regulations provide in Section 150.1(c)(d), formerly Section 19.1 (c)(d),⁸⁵

"Investigations; interrogation of alien under investigation. All statements secured from

tor at the hearing may have been to limit the reception of such evidence to impeachment purposes. In this connection, the Alien relies on the Presiding Inspector's statements on the Schofield testimony made in answer to the objection that such testimony impeached a Service witness (4811):

"I will take it. I think they may impeach their own witness. Of course, it isn't original proof of the matter."

(84) The regulations entitled "New Regulations Governing The Arrest and Deportation of Aliens" promulgated December 31, 1940 (Fed. Reg., Jan. 4, 1941, p. 68) were adopted as a result of an extensive study of Service procedures undertaken by the Secretary of Labor's Committee on Administrative Procedure which emphasized the fundamental, due process right of cross-examination and the need for developing in the Service a "critical awareness" of the problems raised by permitting some types of hearsay evidence. See, The Secretary of Labor's Committee on Administrative Procedure, The Immigration and Naturalization Service, pp. 87-88. (Department of Labor, Washington, D. C., May, 1940).

(85) Fed. Reg. Jan. 4, 1941, p. 68; Fed. Reg. Jan. 11, 1941, p. 1.

Exhibit "G"—(Continued.)

the alien or any other person during the investigation, which are to be used as evidence, shall be taken down in writing; and the investigating officer shall ask the person interrogated to sign the statement. Whenever such a recorded statement is to be obtained from any person, the investigating officer shall identify himself to such person and the interrogation of that person shall be under oath of [sic] affirmation. Whenever a recorded statement is to be obtained from a person under investigation, he shall be warned that any statement made by him may be used as evidence in any subsequent proceeding.

"(d) Investigations: refusal to make recorded statement under oath or affirmation. Whenever, in the course of an investigation, admissions or statements are obtained from an alien or statements are made by any other person which indicate that the alien may be subject to arrest and deportation, but the alien or other person refuses to make a recorded statement under oath or affirmation or refuses or is unable to sign the recorded statement by name or by mark, the investigating officer shall make a report in writing to the officer-in-charge, setting forth the facts admitted or stated as to the alien's status under the immigration laws. This report may be used in support of an application for a warrant of arrest, when the investigating officer certifies that no other evidence

Exhibit "G"—(Continued.)

to establish the facts stated in the report can be readily obtained. . . ."

Section 150.6(i), formerly Section 19.6(i), provides:

"Hearing: use of statement or admissions made during investigation. A recorded statement made by the alien . . . or by any other person during an investigation may be received in evidence only if the maker of such statement is unavailable or refuses to testify at the warrant hearing or gives testimony contradicting the statements made during the investigation. An affidavit of an inspector as to the statements made by the alien or any other person during an investigation may be received in evidence, otherwise than in support of the testimony of the inspector, only if the maker of such statement is unavailable or refuses to testify at the warrant hearing or gives testimony contradicting the statement and the inspector is unavailable to testify in person."

It is clear from the provisions of Section 150.1 (c)(d) that the investigating officer in obtaining a "recorded statement", that is, a statement "taken down in writing", must seek by specific request to obtain the statement over the signature of the maker and by interrogation under oath (or affirmation). When Section 150.6(i) is fairly read in conjunction with Section 150.1 (c)(d), it is such a "recorded statement", so safeguarded, that is permitted as evidence under Section 150.6(i) when the

Exhibit "G"—(Continued.)

maker of the statement gives contradictory testimony on the stand. The O'Neil statement testified to by Major Schofield was received as an oral statement. Neither the O'Neil statement to Major Schofield, nor the O'Neil statement to Segerstrom was by interrogation under oath; neither was signed by O'Neil; and in neither case is there any showing that O'Neil was asked to swear and sign, or that being asked he refused to swear and sign. (2430-1).

The departures of these statements from the requirements of the Regulations are not minor. The problem of hearsay is a serious one. The search for truth must be unfettered. But that search must not be prejudiced by error resulting from blithe, unguarded impairments of the right of cross-examination. The right of cross-examination is itself an aid to truth. Here a written statement at the Schofield interview would have guarded against mistake in hearing, memory or transition. As to both statements, the oath and signature of the maker would at least have shown O'Neil to be, on two occasions, willing to pin himself down, and to do so under oath, thus providing the safeguard of fear of perjury prosecution; and, contrariwise, had he been asked to swear and sign and refused, the fact of his unwillingness, on two occasions, so to pin himself down, would have been of no small weight in evaluating the truth of the statements made.

We find that the use of the Segerstrom and Schofield testimony as affirmative, probative evidence was error under the controlling Regulations of the

Exhibit "G"—(Continued.)

Department. Considering the question apart from the Regulations, which were not cited to the Presiding Inspector, we still find error.

It is suggested that the unsworn, extra-hearing statements made by O'Neil to Segerstrom and Major Schofield were "something equivalent" to testimony by O'Neil under oath at the hearing because O'Neil testified that what he told the agents of the Government was the truth (P.L. 110, 115). There is no comfort in that. It is clear on this record that O'Neil undeviatingly denied making to Government agents any of the material statements claimed by the Service. Moreover, O'Neil's testimony that the statements he made to the Government agents were the truth was given on the basis of the twice-reiterated explanation of the Presiding Inspector that such testimony would not mean the statements that the Service claimed he made (2376-7). Even if no explanation had been made to O'Neil, it would still be difficult, for example, to find that he testified that he did state that he was "amazed" to see Bridges putting stamps in a Party book, and that that was the truth, when, in denying the making of such a statement, he testified (2308):

"I wouldn't have been amazed—I would have dropped dead if such a thing would have happened."

O'Neil swore to "Nay!" No process of reasoning can make it an oath to "Yea!" In re DeGottardi, 114 Fed. 328, 334 (S.D. Cal. 1902); McDonald,

Exhibit "G"—(Continued.)

Adm'r. v. New York Central and Hudson River Railroad Company, 186 Mass. 474 (1904).⁸⁶

The O'Neil statements to Segerstrom and Major Schofield were unsworn. And O'Neil's denial on the stand that he had made the material parts of those statements effectively prevented the Alien from protecting himself by cross-examination. Had O'Neil admitted making the statements, the question here might have been closer, for on that hypothesis cross-examination might have elicited that he lied to confuse, or that, to borrow a phrase (3055) he "was all gowd up" or any other possible explanation. True, O'Neil was present at the hearing, and in a technical sense available for cross-examination by the Alien. But in the face of a completely favorable denial of the making of the statements, the Alien had no opportunity to cross-examine as to the truth of the statements denied. To receive the statements as affirmative evidence would deprive the Alien of cross-examination on

(86) The suggestion that a prior contradictory statement made out of court becomes a statement under oath on the stand because the maker testifies that what he said out of court was the truth is not entirely novel. At another time and place it might have had appeal. Cf. Pollock and Maitland, *History of English Law*, Vol. 2, pp. 648-649. In the two cases cited in the text, which are the only cases found on the point, the suggestion was flatly rejected and it was held that prior contradictory statements could not be received as affirmative evidence.

Exhibit "G"—(Continued.)

highly material evidence at the very heart of the case.⁸⁷

We can find no warrant for this in judicial proceedings. Indeed, the courts generally deny prior contradictory statements affirmative weight and this even when the maker admits making them, and, hence, some modicum of protection for the defending party is present.⁸⁸

(87) Of course, we dismiss as too unreal any possible suggestion that the remedy of the Alien was to indulge in fantasy and cross-examine O'Neil on the hypothesis that he had made the statements claimed.

(88) *Hickory v. United States*, 151 U. S. 303, 309; *United States v. Block*, 88 F. (2d) 618 (C.C.A. 2d, 1937), cert. denied 301 U. S. 690; *Bernhardt, Adm'r. v. Chicago B. & Q. Railroad Company*, 132 Neb. 346 (1937), cert. denied 302 U. S. 685; *Young v. United States*, 97 F. (2d) 200 (C.C.A. 5th, 1938) reh. denied 97 F. (2d) 1023; *New York Life Insurance Company v. Bacalis*, 94 F. (2d) 200 (C.C.A. 5th, 1938); *Rosenthal v. United States*, 248 Fed. 684 (C.C.A. 8th, 1918); *McDonald, Adm'r. v. New York Central and Hudson River Railroad Company*, 186 Mass. 474 (1904); *State v. Saporen*, 205 Minn. 358 (1939); *Zevodnick v. A. Rose and Son*, 297 Pa. 86 (1929). In the *Block*, *Young*, *McDonald*, and *Saporen* cases, *supra*, the makers of the prior statements admitted making them. In the *Block* case, the Court thought that the defendant might have had effective protection since the making of the prior contradictory statement there involved had been admitted, and speculated as to the desirability of a more discretionary rule against hearsay, but nevertheless found the use of such statement as affirmative evidence reversible error,

Exhibit "G"—(Continued.)

Nor can we find warrant for this in the concept that this is, admittedly, an administrative rather than a judicial proceeding. Admittedly, too, this

since it was "not free so to make over the law" (p. 620).

Chicago, St. P., M. & O. Ry. Co. v. Kulp, 102 F. (2d) 352 (C.C.A. 8th 1939) Cert. denied 307 U. S. 636, cited by the Service is scarcely a holding contrary to the cases cited in the first paragraph of this footnote, which cases deal not with the more doubtful issue in this case of admitting as evidence prior statements denied on the stand, but only with the more favorable point (favorable for admission) of admitting as evidence prior statements the making of which is admitted on the stand. In the *Kulp* case, a death action against a railroad, the prior statements of defense witnesses, introduced by plaintiff as part of his original case, had been admittedly made, but made to defendant in the absence of plaintiff; the witnesses were in fact agents of the defendant, and the Court, at least in part (p. 356) treated the statements as admissions of the party defendant; it was not urged to the Court that the prior statements, which were subsequently contradicted, were inadmissible and, finally, the Court held that the case was disposable on other good ground (p. 357). Contrast the square holding of the same Court in the *Rosenthal* case that prior contradictory statements even though admittedly made cannot be used as affirmative evidence.

DiCarlo v. United States, 6 F. (2d) 364 (C.C.A. (2d), 1925); *Curtis v. United States*, 67 F. (2d) 943 (C.C.A. 10th, 1933; *London Guarante and Accident Co. v. Woelfle*, 83 F. (2d) 325 (C.C.A. 8th, 1936); and *United States v. Graham*, 102 F. (2d) 436 (C.C.A. 2d, 1939), cert. denied 307 U. S. 643 are inapposite here. They merely hold with some difficulty that it is not reversible error for a trial court in its discretion to permit cross-examination of one's own witness for impeachment purposes or

Exhibit "G"—(Continued.)

deportation proceeding is not a criminal prosecution although the issues here [(cf. *Fong Lum Kwai v. United States*, 49 F. (2d) 19 (C.C.A. 9th.1931)]

protection against accusation of subornation of perjury by inquiring about prior, contradictory statements; and indicate that a jury may properly consider the whole conduct and bearing of the witness on the stand in reaching the result that the version of the facts given in the prior statements is the true one in the case. In all these cases, the witness admitted the making of the prior statement.

Dean Wigmore in the first edition of his treatise agreed with the cases that prior contradictory statements even when admittedly made cannot be used as affirmative evidence (2 Wigmore, Evidence, 1st Ed. (1904), Sec. 1018(b));

"It follows * * * that Prior Self-Contradictions, when admitted, are not to be treated as assertions having any substantive or independent testimonial value; they are to be employed merely as involving a repugnancy or inconsistency; otherwise they would in truth be obnoxious to the Hearsay Rule."

He is now contra. 2 id., 2nd Ed. (1923), Sec. 1018(b); 3 id., 3rd Ed. (1940), Sec. 1018(b). He argues, while recognizing that the law is otherwise, that the hearsay rule is "satisfied"; the witness being present and subject to cross-examination, there is "ample opportunity to test him as to the basis for his former statement." It is clear that Dean Wigmore is concerned only with prior statements which the witness admits he made which is not the fact in the proceeding before us for a denial of the making of the prior statements cannot be "tested as to the basis" for making them. Even Dean Wigmore's limited view has been pungently criticized:

"That, we submit with deference, is not enough to qualify the previous contradictory assertion as substantive evidence, the oath of

Exhibit "G"—(Continued.)

and the penal consequences of deportation [see *Ng Fung Ho v. White*, 259 U. S. 276, 284; *Wallis v. Tecchio*, 65 F. (2d) 250, 252, (C.C.A. 5th, 1933)]

the witness solemnizes his former extrajudicial state—not at all. It goes only to his testimony which is occasion for and target of impeachment. The previous statement was when made and remains an *ex parte* affair, given without oath and test of cross-examination. Important also is the fact that, however much it may have mangled truth, there was assurance of freedom from prosecution for perjury.

"The chief merit of cross-examination is not that at some future time it gives the party opponent the right to dissect adverse testimony. Its principal virtue is in its immediate application of the testing process. Its strokes fall while the iron is hot. False testimony is apt to harden and become unyielding to the blows of truth in proportion as the witness has opportunity for reconsideration and influence by the suggestions of others, whose interest may be, and often is, to maintain falsehood rather than truth.

"There are additional practical reasons for not attaching anything of substantive evidential value to extrajudicial assertions which come in only as impeachment. Their unrestricted use as evidence would increase both temptation and opportunity for the manufacture of evidence. Declarations extracted by the most extreme of 'third degree' methods could readily be made into affirmative evidence. In criminal cases the defendant would have a similar opportunity to entrap the state's witnesses, and use as evidence all their extrajudicial assertions. The same enlargement of the field of inquiry would result in civil cases.

"If presence of the witness in court, under oath and subject to cross-examination, is

Exhibit "G"—(Continued.)

are not entirely dissimilar.⁸⁹ Unlike other administrative agencies, we deal here not with the complications of a technical subject but with the liberty of a human being—albeit, an alien.⁹⁰ The difference might be thought material enough to require some distinction in treatment of limitations on the opportunity to cross-examine. Yet we rest not on that.

Administrative agencies, generally, including this one, are not bound by the strict common-law rules of evidence. "But the more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended." Interstate

enough to permit admission of his previous statements, the result should not be confined to those which happen to be contradictory. The hearsay rule, if considered satisfied as to contradictory statements, would be equally so as to declarations agreeing with the testimony of the witness. The presence in court, under oath and subject to cross-examination, of the declarant, must serve to satisfy the hearsay rule as to both or as to neither kind of declaration. We hold that it is not satisfied in either case, and hence that the extrajudicial assertion brought in by way of impeachment must be confined to that field." (State v. Saporen, 205 Minn. 358, 361-362 (1939) per Stone J.).

(89) It is of some psychological interest that at the hearing all participants, the Service, the Respondent, and the Presiding Inspector slipped naturally into the technically erroneous use of the terms "Government", "Defense", "Trial", etc.

(90) See Annual Report of the Secretary of Labor, Fiscal Year Ended June 30, 1939, pp. 213-214.

Exhibit "G"—(Continued.)

Commerce Commission v. Louisville & Nashville R. R. Co., 227 U.S. 88, 93; *Tri-State Broadcasting Co. Inc. v. Federal Communications Com'n*, 96 F. (2d) 564, 566 (App. D. C. 1938); *Svarney v. United States*, 7 F. (2d) 515, 517, (C.C.A. 8th, 1925). The admonishment in all three decisions was addressed to administrative action resulting in deprivation of cross-examination in various hearsay situations held unfair. So too, opportunity to cross-examine has been emphasized in judicial review of deportation proceedings as a fundamental requirement of a fair hearing to be but warily relaxed; and in deportation cases, presenting varying circumstances, deprivation of cross-examination by reception of hearsay of varying degree has been held reversible, administrative error making the administrative hearing unfair. *Svarney v. United States*, 7 F.(2d) 515 (C.C.A. 6th, 1925); *Ungar v. Seaman*, 4 F. (2d) 80 (C.C.A. 8th, 1924); *Ex parte McMahon*, 1 F.(2d) 456 (W.D. Wash., 1924); *Ex parte Tom Yuen*, 230 Fed. 656 (N.D. Cal., 1915); *United States ex rel. Papa v. Day*, 45 F. (2d) 435 (S. D. N. Y., 1930); *Brader v. Zurbrick*, 38 F.(2d) 472 (C.C.A. 6th, 1930); *Browne v. Zurbrick*, 45 F.(2d) 931 (C.C.A. 6th, 1930):

Some hearsay is undoubtedly permissible in deportation proceedings, to what extent and under what circumstances we need not, and cannot decide here, for the nature of the subject allows of no rule of thumb. Suffice it as to the state of the authorities that no authority is cited, and we find none, that

Exhibit "G"—(Continued.)

sanctions the deception in administrative deportation proceedings of unsworn, prior contradictory statements the making of which is denied on the stand.⁹¹

Fundamentally, as an administrative agency, we

(91) The Service relies on *Ghiggeri v. Nagle*, 19 F. (2d) 875 (C.C.A. 9th, 1927); and *Hays v. Zahariades*, 90 F. (2d) 3 (C.C.A. 8th, 1937), cert. denied. 302 U. S. 734. Both cases involved sworn depositions or affidavits admitted by the makers to have been made. At that, both cases are questionable authority for the admission as evidence of even such prior contradictory statements. In the *Ghiggeri* case, the alien consented to the introduction of the disposition and expressly waived cross-examination. The real question of substance there appears to have been whether it was arbitrary to place any belief in the deposition. The *Zahariades* case hardly involved the problem. The makers of the affidavits admitted under oath on the stand both that they had been made and that they were true.

Chinese exclusion cases, such as *United States ex rel. Ng Kee Wong v. Corsi*, 65 F. (2d) 564 (C.C.A. 2d, 1933); *Fong Kong v. Nagle*, 57 F. (2d) 138 (C.C.A. 9th, 1932); *Moy Said Ching v. Tillinghast*, 21 F. (2d) 310 (C.C.A. 1st, 1927); and *Wong Wey v. Johnson*, 21 F. (2d) 963 (C.C.A. 1st, 1927) have little pertinence here. We pass over the differences between deportation and exclusion generally. These cases all present the same picture of a Chinese applicant, born in China, who claims to be the son of another Chinese, an American citizen, who has been in China. The facts of the relationship are buried in the interior of China and in the minds of the putative son, the putative father who is the real proponent in these cases, and any identifying witness of Chinese race that the father can find to help him. The backdrop of this uniform picture is cool fraud, calculatingly practiced in

Exhibit "G"—(Continued.)

are required in deciding the question of the admissibility as evidence of the O'Neil prior statements to

many cases with Oriental patience, sometimes over the course of decades. The problem thus raised of the rich fraud in an area where the facts are available only to those who might be fraudulent is separately treated in administration. It has evoked its own solution in practical administrative and judicial devices. Family relationship statements made under oath are secured from American citizens of Chinese race at the beginning and end of trips to and from China, and practically at any other time of opportune contact with the Service; and such sworn statements are carefully kept as official records of the Service. Further, since the applicant and his proponent father and identifying witnesses are in possession of the true facts, it has become settled that the burden is on the applicant's side to establish the relationship; that the sworn records of the Service may be used to show a conflict in prior sworn statements; and that a serious conflict may cast enough doubt on the whole case to result in an order of exclusion that is not arbitrary. See *United States ex rel. Yee Kwong Seung v. Director of Immigration*, 102 F. 2d 1021 (C.C.A. 2d, 1939); *Fong Kong v. Nagle*, supra; *United States ex rel. Ng Kee Wong v. Corsi*, supra.

Such were the prior contradictory statements admitted in the Chinese exclusion cases—sworn statements of the father or identifying witness, official records kept as a practical device against known fraud, all admitted at the hearing to have been made. Moreover, recognizing the realities of the peculiar Chinese situation, the admission of prior statements of the father, certainly, and even of the Chinese identifying witness, goes little, if any, further than the well-settled "Admissions" rule. The father is the clear proponent in these cases and the identifying witness is in the circumstances closely identified with him. Lastly, the prior sworn

Exhibit "G"—(Continued.)

weigh the factors of materiality, reliability, and protection of the Alien.⁹²

The O'Neil prior statements were obviously highly material. They were equally unreliable. And there was no effective protection for the Alien. With the factors of high unreliability and lack of protection present, the materiality of the statements all the more requires their exclusion as evidence. It is one thing to distinguish between impeachment testimony and affirmative evidence, it is another to admit questionable evidence without safeguards for some undefined value of what it is worth. "If it is true of juries, it is not wholly untrue of judges that they too may be 'impregnated by the environing atmosphere.' Mr. Justice Holmes, in *Frank v. Mangum*, 237 U. S. 309, 349." See the dissenting opinion of Mr. Justice Frankfurter in *Harry Bridges, petitioner v. State of California*, U. S. Sup. Ct., No. 1, Oct. Term 1941 (U. S. L. W. December 9, 1941, p. 4074).

statement used in each of the Chinese exclusion cases cited was made under circumstances reasonably guaranteeing its truth and was credible on its face. That important fact is not present here. See the text, pp. 458-466.

(92) See *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 229; *Interstate Commerce Commission v. Louisville & Nashville R. R. Co.*, 227 U. S. 88, 93; *John Berte & Sons v. Federal Trade Commission*, 299 Fed. 468 (C.C.A. 2d, 1924); Report of Attorney General's Committee on Administrative Procedure, Sen. Doc. No. 8, 77th Cong., 1st Sess., pp. 70-71.

Exhibit "G"—(Continued.)

The prior statements of O'Neil are excluded from use as affirmative evidence.

Yet, in any event, those statements are, on the record here, not credible, and we so find. O'Neil lied under oath in this proceeding when he denied making the statements. His unsworn prior statements show him therein the bragging sensationalist with little regard for precision in truth. O'Neil "knew" that everybody employed in the West Coast offices of the C.I.O. and everybody employed by the unions with offices in the same building (with one startling exception) were members of the Communist Party—"there was no secret, no bones made about it at all" (Gov. Ex. 255, 5th page). He "knew" further that vacancies there in C.I.O. personnel were "invariably, without exception to [his] knowledge while [he] was there, supplied after consultation with Schneidermann from the Communist Party headquarters" (Gov. Ex. 255, 5th page). It is claimed by the Service that O'Neil at the Schofield interview asserted that the Service had "a lot of witnesses testifying who do not know what a real top fraction meeting is" (2351); but O'Neil does. "A top fraction consisted of Bridges, Gladstein, Scheinermann" (2352); and what is more, he "knows" that all of the Alien's counsel in this proceeding are Communists—Gladstein, Grossman and Margolis on the West Coast, and King on the East Coast (2352-57). For all of this he states no supporting detail.

Judging from the prior statements, a feeling for

Exhibit "G"—(Continued.)

drama, personal drama,—even martyrdom, apparently accompanied his gift for the sensational. He obtained the editorship of the "Voice of the Federation" by showing up when "even at that moment the Maritime Federation Executive Board was meeting * * * to pick an editor." Two other applicants previously under consideration were rejected and O'Neil got the job the next day, New Year's Eve. On New Year's Day, but not before O'Neil withdrew from a dinner on New Year's Eve "at the request of practically the entire San Francisco Communist Party," he was "informed" that "a very important person was waiting to see [him] in the house." He "immediately recognized" Harry Bridges "from his pictures". Bridges had called to tell O'Neil how to run the paper. (Gov. Ex. 255, 1st and 2nd pages). Later days grew more mournful. A Communist bigwig after a dramatic conference complained that he, O'Neil, was "a bad influence in the C.I.O.," that he "should be removed," and that "Bridges was listening to [him] too much." (Gov. Ex. 255, 5th page). He was forced, for a while, as a member of the Communist fraction in the Newspaper Guild to be "the man on the flying trapeze," and sought a place "where there was a net under me." It became "0 to 0 in the last of the 9th as far as" he and the Party were concerned (Gov. Ex. 255, 4th page). And it is alleged by the Service as O'Neil's statement that if called as a witness in this proceeding he might "as well jump in the Bay and have it over with."

Exhibit "G"—(Continued.)

(2364); indeed, he would "go up on the stand and say that to testify is a crucifixion" (2363).⁹³

O'Neil's introduction to the most dramatic incident of his prior statements is itself theatrical. At the Schofield interview, which was after the Segerstrom interview, he "volunteered this: That he, O'Neil, so far as he knew, was the only man who had visual evidence of the fact that Bridges was a Communist" (4810). On being asked at the Schofield interview what that meant, O'Neil recounted, of course, the incident previously recounted to the F.B.I. at the Segerstrom interview of seeing Bridges put stamps in a Party book. This incident has its inherent improbabilities. On the 7546 pages of this record, it is clear that Bridges' membership in the Party, if Bridges were a Communist, would be hidden under the Communist Policy of "hypocrisy and deceit" not only from the public but also from rank and file Communists. O'Neil, himself, says in the Segerstrom statement:

"It is my belief that Bridges never at any

(93) There is also some indication in the record that O'Neil played Judas as well as Ananias. He saw Bridges just before the Segerstrom F.B.I. interview to inform him that the F.B.I. had called him, and he saw Bridges immediately after the Segerstrom interview to tell him what had happened. He did not tell Bridges that he had just told the F.B.I. that he believed Bridges to be a Communist (2335-6). After the Segerstrom interview, Bridges asked O'Neil to serve on the Bridges Defense Committee (2350). The following day, O'Neil called his friend (2341; 4816), Cassidy,

Exhibit "G"—(Continued.)

time attended any Communist Party meetings. He might have met with one or two of the trusted and highest officials of the Party, as that would be all that would be necessary to conduct any business he had with them." (Gov. Ex. 255, 4th page)

Yet Bridges, according to the same O'Neil statement, apparently carried a Party book around in his pocket; paid his dues, like everyone else, to a dues collector (Gov. Ex. 255, 4th page). And, according to the further statement of O'Neil claimed by the Service, Bridges was faithfully putting the assessment stamps in the book when O'Neil saw him because as Bridges said, "I did not have time today" (2341).⁹⁴

F.B.I. agent on this case, and as the Service claims, informed him of Bridges' offer. He is claimed to have suggested that if given assurance that he would not be called as a witness he would serve on the Defense Committee where he "could act as an informant and in that way the Bureau [F.B.I.] would have a pipeline to all of the activities transpiring in regard to the Defense Fund" (2364-8). Which side, if either, or both, was being betrayed only O'Neil might know. Yet, while there is no need to place reliance on this point, the indication of the presence of this kind of abortive middleman and the misty atmosphere surrounding him are not conducive to belief in his statements.

(94) We place no reliance on the fact that Bridges was supposed to be sitting "relaxed * * * with his feet on the desk" and using his thumb to place stamps in the Party book on his desk (2341-2; Gov. Ex. 255, 4th page). O'Neil's implication that this episode involved a physical impossibility lacks supporting detail in the record.

Exhibit "G"—(Continued.)

But most serious, and fatally defective, are the internal contradictions in the O'Neil statements on material points. O'Neil has "attended at least five Communist Party meetings with Bridges." Bridges held top fraction Party meetings in his hotel room. Bridges reminded O'Neil that O'Neil was not attending Party meetings. "Bridges never at any time attended any Communist Party meetings" (Gov. Ex. 255, 4th and 6th pages; 2358-9). Bridges discussed Bridges' membership in the Party with O'Neil. Bridges never stated to O'Neil that he was a member of the Party (2408; 2351). O'Neil did not see the name in Bridges' Party book. He did see the name. "It was his [Bridges'] right, his own name." It was not Bridges' "own name", "it was under the name of Dorgan" (2407; 2326-2327; 2342-3).⁹⁵

It is recommended (P.I. 117), nevertheless, that O'Neil's prior statements be believed because of the fact that he sought to avoid testifying, and the inference that therefore "the occurrences narrated in his statements * * * were true, or he was in possession of other information damaging to Bridges' case." We might agree with the Presiding Inspector that O'Neil lied in explaining his reluctance to testify on the ground that his mere appearance in the case would hurt his reputation with Labor since many union men read only headlines (2392). O'Neil might have lied at any given point in his testimony

(95) For the detail on the contradictions set forth in the text, see *supra* pp. 433-437.

Exhibit "G"—(Continued.)

or prior statements. But it does not follow that therefore his prior statements were true.⁹⁶ He might have feared to say openly what he was willing to say secretly, whether or not it was truth; or more likely, knowing that he had lied previously in connection with the case,⁹⁷ he might have been possessed with an all-permeating fear of perjury prosecution.

But on the record here, we need not speculate as to the springs of action that moved O'Neil. Nor need we weigh at this point the superior credibility of the Alien, who denied the truth of the material parts of the O'Neil statements (5513-5).⁹⁸ It is enough that O'Neil is not the appealing matter-of-fact witness whose only errors would be honest mistakes; and that his statements are what they are. Clothing O'Neil in kindly formal language, we conclude that the material incidents of

(96) Neither does it follow that "he was in possession of other information damaging to Bridges' case." But we suppose it is clear enough, in any event, that even if he had other information, it would not be relevant to the record before us.

(97) It is clear he did some lying in the prior statements. All parts thereof couldn't be true.

(98) The Alien's denial was entered solely to protect him against the possibility of use of the statements as affirmative evidence over his objection (5513-4).

Exhibit "G"—(Continued.)

his prior statements are not established by the greater weight of the evidence.⁹⁹

B. Harry Lundeberg

Harry Lundeberg, a prominent trade union figure on the Pacific waterfront for many years, was produced by the Service as a witness in rebuttal. He occupies a position in the A. F. of L. organization somewhat comparable to that of Harry Bridges in the C.I.O.¹⁰⁰ Originally friendly, relations between the two men have become embittered (7017; 7122; 7362 ff.).

(99) It is a matter of no consequence here; but it should at least be noted that the O'Neil prior statements alone, even if they were admitted as affirmative evidence and believed, could not support an order of deportation. Mere uncorroborated hearsay does not constitute the substantial evidence necessary to the validity of an administrative order. See *Consolidated Edison Company v. National Labor Relations Board*, 305 U. S. 197, 229-230; *National Labor Relations Board v. Washington Dehydrated Food Company*, 118 F. (2d) 980, 985 (C.C.A. 9th, 1941).

(100) Lundeberg has been a member of the Sailors Union of the Pacific for eighteen years (7000), and held office in that Union as early as 1934 (7036). As early as April, 1935, he was elected and served as the first President of the Maritime Federation of the Pacific (7000). He is the Secretary-Treasurer of the Sailors Union of the Pacific, head of the Seafarers' International Union of North America, and Vice President of the State Federation of Labor of California (6999). Bridges is C. I. O. director for the State of California, a member of the Executive Board of the C. I. O., and an official of the I.L.W.U. (5977).

Exhibit "G"—(Continued.)

Lundeberg testified that he has been to Bridges' home once. He went to dinner, as the result of Bridges' casual invitation to Lundeberg down on the waterfront "to come up to have dinner with him and a friend of his" (7086-7; 7006). Lundeberg went alone.¹⁰¹ At the house, he found Bridges, Bridges' wife, Norma Perry, who was then Bridges' secretary, and a fourth person, introduced as Jacobson, a carpenter (7080; 7083).¹⁰² Shortly afterwards, as Lundeberg testified, Jacobson told him that his real name was Darcy (7084). (Bridges admits knowing a Darcy who is a Communist (5749). The witness does not remember whether the introduction of Jacobson, or the giving of

(101) The witness was somewhat uncertain about this detail. Verbatim, his testimony was on cross-examination:

"Q. When you went to dinner at Harry Bridges' house did you go alone?

A. No.

Q. Whom did you go with?

A. I went there with—well, I went alone but I met people there.

Q. What other people did you meet there?

A. I met Bridges' wife and Bridges' secretary.

Q. Did you bring anybody?

A. No." 7050-1).

A few minutes later, the Alien's counsel returned to the subject:

"Q. When you came into the house you say you didn't bring anybody to the house with you?

A. Not that I remember." (7082).

(102) He can't remember whether Bridges' daughter was there. "She might have been in and out of there; I don't know." (7083).

Exhibit "G"—(Continued.)

Jacobson's real name as Darcy was in the presence of the others in the house or not (7085-6).

Sometime during the evening, the discussion, which is important here, is said to have taken place. Present at the discussion were said to be Lundeberg, Darcy, and Bridges. The others were not present (7082). The first inquiry as to the substance of the discussion was on direct: (7007)

"Q. Will you relate all the conversation that you had in Bridges' home at that time with Darcy, yourself and Bridges?

A. Well, I don't remember the details. We talked about various things on the waterfront, and unions, and so forth. Darcy asked lots of questions. It was a general conversation."

After a few intervening questions on another point, counsel returned to the subject with a specific question as to whether Darcy asked Lundeberg "to do anything." This elicited the information that Darcy asked Lundeberg to join the Communist Party, and stated that the Party would aid him by giving him support (7007). A further specific question as to whether Darcy said "anything about Bridges' being a member of the Communist Party in Bridges' presence" brought forth the response: "He mentioned several people who was a member of the Communist Party" (7008). Counsel persisted. The record continues:

"Q. What did he [Darcy] say about Bridges?

Exhibit "G"—(Continued.)

A. Well, he said he was a member of the Communist Party.

Q. What did Bridges say?

A. Well, he says, 'You don't have to be afraid because nobody has to know you are a member of the Communist Party if you join.'

Q. Did Bridges join Sam Darcy in urging you to join the Communist Party?

A. No. Sam Darcy is the guy—Sam Darcy was the guy who wanted me to join the Party."
(7008)

Lundeberg went on to state that Darcy promised him lots of publicity and to "make a great labor leader out of" him. Lundeberg replied that he wasn't interested in joining the Party, that he had always belonged to a trade union, and couldn't see why he should belong to the Party. (7008-9). After an admonition by the Presiding Inspector that the examination was leading and to be very careful, Mr. Del Guercio, Service Counsel, continued his direct examination: (7009-10).

"By Mr. Del Guercio:

Q. Was anything else said by either Sam Darcy or by Harry Bridges at that time?

A. Well, I can't remember. There was a general conversation.

Q. Now, did you join the Communist Party?

A. I should say not.

Q. Can you recall at this time anything else that Bridges may have said in the presence of Darcy and yourself at that time?

Exhibit "G"—(Continued.)

Presiding Inspector: That he did say.

A. I can't remember the details. It was a general conversation.

By Mr. Del Guercio:

Q. Generally, in substance, what did Bridges say? We don't expect you, of course, to remember the exact words or the—

Presiding Inspector: Have you given the substance as far as you remember it?

The Witness: Well, the substance was, as I told you, that Darcy asked me to join the Communist Party and Bridges says, 'You don't have to be afraid because I am one too,' and the old stuff, and the conversation was friendly all the way through, and I just laughed at it and forgot about it."

The witness' version of the conversation on cross-examination was substantially the same as that we have just quoted from his testimony on direct (7087).

Bridges testifies that Lundeberg has been to his house for dinner once; but that Darcy never has. He agrees that his wife was present on the occasion of Lundeberg's visit. He also believes that Lundeberg is correct on the point that Norma Perry was present.¹⁰³ It is his thought that Norma Perry brought Lundeberg up to the house (7361-2; 7502-3). Bridges denies that there has ever been any differ-

(103) Bridges adds that he thinks his "two children, the boy and the girl" were at the house at the time of the Lundeberg visit (7362).

Exhibit "G"—(Continued.)

ence between him and Lundeborg as to following the Communist Party Line or as to Lundeborg's joining the Party; denies that he has ever told Lundeborg that he, Bridges, was a member of the Party; and denies that he has ever told Lundeborg that he had nothing to be afraid of and should join the Party (7509-10; 7502).¹⁰⁴

Counsel for neither side saw fit to call Mrs. Bridges, Norma Perry or Darcy.¹⁰⁵ It is our task

(104) Neither Lundeborg nor Bridges fixes the time of the dinner definitely. It occurred sometime between the end of June and September, 1935. (7006; 7007; 7030; 7035; 7037; 7046; 7081-2; 7114; 7118; 7126; 7361; 7386-7; 6065; 5902; 6070-1; 6161; 7362). The exact date of the dinner might have been of some importance for it is the uncontradicted evidence of a Service witness that Darcy attended as a delegate a convention held in Moscow which began the last week in July of 1935 and lasted about a month (1481).

(105) This fact, unexplained since it was not raised by either side at the hearing, raises no inference unfavorable to either the Service or the Alien. The failure to call Darcy, a prominent Communist, is readily understandable as a reasonable judgment on a close trial question from the viewpoint of either counsel. While the Service had the burden of proof, counsel for the Service was entitled to rely on his judgment that Lundeborg alone had carried that burden, and was not required to call Norma Perry and Mrs. Bridges as witnesses in whom he might have had no confidence. Nor can the Service's burden be transferred to the Alien by raising an unfavorable inference against him for counsel's failure to call Norma Perry and Mrs. Bridges. Since they were not present (7082), they could not have testified to the material point here,

Exhibit "G"—(Continued.)

to weigh the uncorroborated word of Lundeberg, admittedly a biased witness, against the uncorroborated word of Bridges, obviously an interested witness in his own behalf. Biased witnesses can and do tell the truth; so too, defending parties. Has bias or self-interest operated here to distort truth?

the content of the conversation which Lundeberg recounts. Cf. *Mammoth Oil Co. v. United States*, 275 U. S. 13, 51-3; *Hann v. Venetian Blind Corp.*, 111 F. (2d) 455 (C.C.A. 9th, 1940); *De Gregorio v. United States*, 7 S. (2d) 295, 296 (C.C.A. 2d, 1925); *Peoria Life Insurance Co. v. Smith*, 47 F. (2d) 279, 280 (D.C. Mich., 1931). It cannot even be assumed that they have any recollection of a casual dinner which occurred five or six years ago. Further, to say that Mrs. Bridges and Norma Perry are friendly to Bridges and in his control is an assumption on this record, and at best in the case of Perry is contrary to the record. Cf. *Mammoth Oil Co. v. United States*, supra; *Robinson v. Union Central Life Insurance Co.*, 144 Fed. 1005 (C.C. Ga., 1906). Norma Perry first volunteered to act as a stenographer for Bridges' union in the 1934 strike. He fired her along with others. "Somehow she got back," and after the strike, was hired by Bridges' union over Bridges' opposition as a regular union stenographer. She was assigned to Bridges as one of several secretaries against his will. He finally fired her for the second time on suspicion that she was a labor spy. See Bridges' testimony on cross at 6067-8 which precedes the appearance of Lundeberg in the case; and *Alien Ex. 12*, p. 148. Perry, then, if anything, might be thought hostile to Bridges and friendly to the Service. An unfavorable inference, if any were drawn here, would be against the Service. But we draw none.

Exhibit "G"—(Continued.)

Lundeberg's bias against Bridges is conceded. The two men disagreed as early as October 1935 on fundamental union policy and have disagreed in a series of disputes in the years since (7075; 7122; 7362 ff.)¹⁰⁶ Both men tend to disclaim personal enmity but that their differences have deepened into enmity is rather clear on this record (7017; 7018; 7102-3; 7500-1; 7502; 7504). Still, a man might be scrupulously fair toward his enemy. Against this background we examine Lundeberg's testimony.

Striking is the fact that Lundeberg gives three, successive, growing versions of the conversation at Bridges' home. The first does not implicate Bridges at all—"Well, I don't remember the details. We talked about various things on the waterfront, and unions, and so forth. Darcy asked lots of questions. It was a general conversation" (7007). In the second version, Darcy tried to persuade Lundeberg to join the Party, and, while Bridges did not participate in the persuasion, he did say, "You don't have to be afraid because nobody has to know you are a member of the Communist Party if you join" (7008). Only in the last and third version does Lundeberg add that Bridges said, "You don't have to be afraid because I am one too" (7009-10).

(106) Several specific instances of disputes are given in the record. An underlying basic controversy, according to Bridges, appears to have con-

Exhibit "G"—(Continued.)

A possible explanation is that Lundeberg testified with reluctance either out of over-scrupulous fairness toward an enemy or out of avoidance of being too important a witness against a labor leader in what to him may appear to be a labor case. Yet Lundeberg apparently had overcome any such reluctance the night before his taking the stand when in an interview following upon a subpoena he volunteered to counsel for the Service that Bridges at the dinner had admitted to him that he was a Communist (7089; 7101). A witness, reluctant for such reason, would hardly tell a story that grows stronger and stronger until on cross he becomes the champion of his side in clear hostility to Alien's counsel (7068; 7070; 7042-60; 7128). It is at least as likely an hypothesis that he at first hesitated to commit perjury, but having once decided to do so, he assumed a strong offensive in uneasiness. That view is consistent with Lundeberg's statement to Government agents in three different interviews during the six years since the

cerned Lundeberg's policy of "job action." This is described at 7271:

"The most basic disagreement again was this question of job action which was at the root of the whole thing again, because I can recollect distinctly Lundeberg making the motion that any time the majority of a crew of a ship wished to take action to tie that ship up the entire coast swing in behind them with their support, and that official motion was made in the minutes and was defeated, but that was the basic matter below everything, although there were a few things that I think we agreed on."

Exhibit "G"—(Continued.)

dinner in 1935 that he had no information that Bridges was a Communist (7088-90; 7120-1). A middle hypothesis is no less disturbing. It may be that Lundeborg, whose recollection of the details of the dinner occasion is slight (7007; 7009; 7080-8), does not recall the exact substance of the conversation, and that the all-important admission of Bridges crept into his third version only as an unnoticed, immaterial (to him) variant of the second version.¹⁰⁷ This would make his testimony as to Bridges, admission of membership of slight weight, particularly when it was given in response to suggestive leading questions on direct.

We evaluate, too, the force of Lundeborg's prior, contradictory statements. He admits that he has thrice told agents of the Government that he had no information that Bridges was a Communist (7088-91; 7120-1).¹⁰⁸ The witness does not claim

(107) Something similar may account for another difference between the first two versions as against the third. In the first two, we have a serious conversation about unions and the waterfront. Darcy makes a persuasive effort to get Lundeborg into the Party. He tells him the good it will do him. But Lundeborg answers soberly that he isn't interested, he's always belonged to a union, and "couldn't see why" he "should belong to the Communist Party" (7007-9). The general tone of the conversation strikes a different note in the third version: "The conversation was friendly all the way through, and I just laughed at it and forgot about it." (7010; 7087).

(108) The first denial of information on Bridges as a Communist was made by Lundeborg to then

Exhibit "G"—(Continued.)

to have forgotten the dinner incident on these occasions, all three of which occurred since the dinner. To the contrary, he claims to have mentioned the dinner conversation "to a lot of sailors from time to time," "to some of the officials and the members of the Sailor's Union," although on request he was unable to name any of them (7088). The suggestion (P.I. 106), that Lundeberg's three statements contradicting his testimony here are to be understood in the light of a "natural reluctance" to testify in this type of proceeding, helps not. Were that theory accepted, it would still show only that Lundeberg on three past occasions lied when for reason sufficient to him he deemed it expedient. The Alien claims that expediency exists here, too, in the bitter union rivalry between Bridges and Lundeberg (Alien's Brief, pp. 20-1; 22-3. See *supra*, p. 85). In fact, Lundeberg, himself, on the stand, does not make the explanation suggested. He does evade questions as to the prior contradictory statements; and the admission that they were made is but slowly wrung from Lundeberg on cross-examination (7088-99; 7120-1). Yet immediately after making his reluctant admission, Lundeberg in testifying as to his meeting with

counsel for the Service handling the 1939 Bridges deportation hearing, and at the time of that hearing. The second was made to two agents of the F.B.I. in the fall preceding this hearing. The third was made to Major Schofield and counsel for the Service a month or six weeks before Lundeberg testified.

Exhibit "G"—(Continued.)

counsel for the Service the night before he took the stand, at which meeting he revealed for the first time his information on Bridges, states (7101):

"Naturally, I told the truth. I am not going to tell the Government a lie, am I?"

The Presiding Inspector notes that Lundeberg gave his testimony. "in a natural, rugged, hard-bitted fashion" (P.I. 106). These are adjectives of varying content and connotation. It may well be. On the record here, Lundeberg impresses neither in truthfulness nor in forthrightness. His testimony preliminary to a final admission that he told agents of the F.B.I. last fall that he had no information on Bridges' membership in the Party, needs no comment: (7087-92)

"Q. Now, you say that that night Bridges said, admitted to you that he was a Communist?

A. Well, that is what I said. He stated 'Nothing to be afraid of; I am a member of the Communist Party' and shrugged his shoulders and laughed. And I said 'Well, it is O.K.; do what you like; I will do what I like.'

Q. Have you ever told anybody about this?

A. Oh, I have mentioned that from time to time.

Q. This specific—this particular admission, Mr. Lundeberg?

A. Oh, I mentioned it to a lot of sailors from time to time.

Q. All right; who is the first person you ever mentioned it to? Do you remember?

Exhibit "G"—(Continued.)

A. Oh, I can't remember whom I have mentioned it to.

Q. Well, name any person to whom you have mentioned it?

A. Oh, to some of the officials and the members of the Sailor's Union. I can't tell who the first was.

Q. When is the first time that you ever mentioned to anybody that Bridges had admitted to you that he was a Communist?

A. Oh, I can't remember.

Q. When is the first time you ever told any Government agency anything to that effect?

A. I have never told the Government agency that at any time.

Q. At any time up to the time that you took the stand?

A. Well, I was—

Q. (Interposing) At any time up to the time you took the stand, Mr. Lundeborg?

A. I talked to Mr. Del Guercio last night. I was called in. He had a subpoena against me. Otherwise, I didn't want to go to jail for 60 days so I went up and saw him.

Q. I am not asking you anything as to the subpoena, I am asking you now when is the first time you ever told any representative of any Government agency that Bridges had told you that he was a Communist? Last night?

A. Yes.

Q. Now, have you ever been approached prior to last night with respect to testifying in this case or in any case against Bridges?

A. Yes; I was approached here last fall by a couple of men from the FBI.

Exhibit "G"—(Continued.)

Q. Did they seek information from you?

A. Yes; they asked me to testify against Bridges.

Q. Well, did they ask you questions?

A. No.

Q. They asked you no questions at all?

A. They asked me lots of stuff and I told them 'I don't know; I don't want to testify. I don't want nothing to do with it.'

Q. Well, what did they ask you?

A. They didn't get the chance to ask me because I said 'I want nothing to do with you.'

Q. How long were they with you?

A. Oh, I would say about half an hour or so.

Q. Well, during that half hour they asked you some questions, didn't they?

A. Yes, they shot questions at me but I didn't—they didn't get any answers.

Q. You didn't answer any questions of any kind?

A. I says 'I don't know.'

Q. What questions did they ask you, Mr. Lundberg?

Mr. Del Guercio: If your Honor please, the witness has already testified that he didn't answer any questions. What difference does it make?

Mr. Gladstein: No; he has just testified—

Presiding Inspector: I think it might have some significance. I will take it.

A. They asked me if I wanted to testify in the Bridges trial and I says 'No.'

Exhibit "G"—(Continued.)

By Mr. Gladstein:

Q. Well, that didn't take half an hour. What else did they ask you?

A. Maybe it was twenty-five minutes; I don't know.

Q. Well, didn't they ask you whether you had any information as to whether Bridges was a Communist?

A. I don't know what they asked me. They asked me if I would testify. I told them 'No.'

Q. Did they ask you whether you would testify before they asked you if you had any information as to whether Bridges was a Communist?

A. They asked me whether I wanted to testify and I said 'No.' They kept on asking the same thing. I said 'No.' And I didn't give them any information and they left me in disgust.

Q. Mr. Lundeborg, do you mean to testify that for twenty-five minutes or half an hour some FBI Agents kept asking you just the question, 'Do you want to testify?' And that you kept saying 'No,' and that there were no questions directed to you asking for information as to whether Bridges was a Communist?

A. Well, you know in twenty-five minutes you can waste a lot of time. See, first of all when people talk to me I want to know who they are, see; they have got to produce the stuff. And I asked them a lot of questions, see, so I didn't give them a chance to ask me so much, see.

Q. Well, now, will you please answer this: Did the FBI Agents ask you to testify against Harry

Exhibit "G"—(Continued.)

Bridges before they asked you what information you had or might have that would prove Bridges was a Communist?

The Witness: Will you repeat that again?

Mr. Gladstein: Certainly. Read it.

Presiding Inspector: Read the question.

(The question referred to was read by the reporter as above recorded.)

A. They asked me if I had any information and I says 'No.' Then, they asked me whether I wanted to testify at the Bridges' trial and I said 'No.' Whether I said that before or after I couldn't tell you. It is pretty hard to remember.

By Mr. Gladstein:

Q. Let's see if I have this straight, Mr. Lundberg. The two FBI agents asked—

Mr. Del Guercio: (Interposing) He has the testimony of the witness. It isn't necessary—whether or not Mr. Gladstein has it. He can read it from the record.

Mr. Gladstein: That was simply—

Presiding Inspector: That is preliminary.

Mr. Gladstein: (Continuing) —an expression; yes.

By Mr. Gladstein:

Q. Did the FBI men ask you if you had information that would prove Bridges was a Communist, and did you then say 'No,' and did they then ask you to testify against Bridges, is that the way it happened?

Exhibit "G"—(Continued.)

A. I don't remember if they asked me one question first or afterward.

Q. It might have happened that way?

A. Might and might not.

Q. Did either they, or you, mention this meeting, or this supper at Bridges' house? A. No.

Q. Is last night the first time that this was mentioned in any discussion between you and a representative of the Government, or any branch of it?

A. That is right."

And see also 7120-1.

As impressive in evasiveness is his testimony on the Shepherd Line controversy. This subject was introduced on direct (7018) with Lundeborg stating that "Bridges led a bunch of goons through the Sailor's Union picket line in Seattle and broke their picket line on the whole Pacific Coast when we had a fight with the shipowners. He took the side of the shipowners." On cross, Lundeborg begins by flatly denying that this was a jurisdictional dispute between his union and the National Maritime Union (7042). There follow in the record, p. 7042 to p. 7060, many pages of the unresponsive, and at times incredible, backing and filling of a witness who is not forthright. The same lack of candor is present in his exposition of his police record. See the record at 7108-13.

With considerable diffidence, we cannot accept the learned and experienced Presiding Inspector's statement that Lundeborg was impressive in his truthfulness. The record is clear—to the contrary.

Exhibit "G"—(Continued.)

And in performance of our duty of decision, we must decide to the contrary.¹⁰⁹

Finally, in connection with weighing the worth of Lundeberg's testimony, the Alien urges two improbabilities in Lundeberg's story. It is unlikely, he urges, that Bridges, at the dinner, would have revealed Party membership to Lundeberg, when Lundeberg had been openly fighting Communists for some months at least prior to the time of the dinner. It is true that Lundeberg does say without hesitation (7037) that "absolutely" he has openly fought Communists ever since he became President of the Maritime Federation of the Pacific in April 1935, which at the least is approximately two months before the time of the dinner. But the force of the suggested improbability is weakened by Lundeberg's statement at another point in the record (7936) that he didn't start fighting the Communists until they threatened him sometime after the occurrence of the dinner (7114). There

(109) In all fairness, the full context of the Presiding Inspector's treatment of Lundeberg's truthfulness should be given. It is: (P.I. 106-7)

"Lundeberg gave his testimony in a natural, rugged, hard-bitted fashion. He impressed me with his truthfulness. He made no effort to conceal his enmity for Bridges. He characterized Bridges' labor record with a damaging phrase, saying 'It stinks'. He expressed the view that the trade-union movement on the Coast would be better off without him. However, I do not believe his bias would cause him to deviate from the truth."

It may be that the statement "he impressed me with

Exhibit "G"—(Continued.)

is however considerable force to the additional argument that it is unlikely that Darcy would have promised to "build up" Lundeberg and "make a great labor leader out of" him (7008). It is the fact that Lundeberg at the time of the dinner was already a powerful figure in maritime matters on the Pacific Coast.¹¹⁰ As the elected President of the Maritime Federation of the Pacific, Lundeberg at the time of the dinner headed that combine of the various maritime unions on the Coast, including the Longshoremen, the Sailors, the Marine Cooks and Stewards, the Marine Firemen, etc. (7007)

Against such testimony of Lundeberg's we weigh Bridges' denial. We are not concerned, of course, with the general undesirability or desirability of Bridges as an alien resident. In evaluating his denial, we are concerned with the record here on Bridges as a witness. If self-interest led him to lie, to evade, to stretch the truth, the record should show it. Scrutinizing his testimony from end to

his truthfulness" is based not on the manner and content of Lundeberg's whole testimony but rather on the fact which follows the statement, namely, that "he made no effort to conceal his enmity for Bridges." But that fact is not persuasive. Concealment of Lundeberg's enmity on this record would scarcely have been feasible. See 7122; 7363 ff.; 7074-5.

(110) Indeed, were the fact otherwise, there would have been little reason for a carefully set plan to bring Lundeberg into the Party. See Service Brief, p. 55.

Exhibit "G"—(Continued.)

end, we find no indication that self-interest so operated. Rather, he is impressive. He is no part of a preconceived and prepared general plan of defense. Unfavorably to his case, he unhesitatingly contradicts his own witness (5811). Indeed having testified from memory as to what his own personal records showed, he voluntarily corrects himself the next day after checking his memory against his records overnight (5649). With his own counsel trying hard properly to identify and introduce some teletype messages through him, Bridges when asked about his filing system answers, "They were filed, maybe not very efficiently, but we filed them away in the cellar some way." Alien counsel persisted in his effort. The Presiding Inspector said to Bridges, "I can't understand still who it went to, or where it was sent, or where it came from." To which Bridges replied, "As a matter of fact during the strike there was some inexpert people on the other end sending a lot of these messages and we had a tough time understanding some of them ourselves."¹¹¹ (5588; 5595). Similarly, in the middle of a long series of questions on direct obviously

(111) This occurred in the midst of Bridges' confused testimony concerning a Madison Square Garden Meeting which, far from being devious, reasonably reflects the chaotic system of intercommunications and arrangements between the East and West Coast resulting from the schisms and cross-purposes of the then current strike. The voluminous record on the Madison Square Garden Meeting is further obscured by the incredible testimony of Innes, McCuistion, and Curran.

Exhibit "G"—(Continued.)

designed to elicit as many controversies between Bridges and Lundeberg as possible, the Alien's counsel inquires whether the two had disagreed on racial discrimination. In response, Bridges volunteers that that dispute between his union and the S. U. P. antedated Lundeberg's leadership of the S. U. P. (7372). He frequently volunteers information which, in view of the approach of the Service in this case, might well have been thought dangerous on the issue of affiliation. For example, he did not in fact collaborate with William F. Dunne, a Communist, in writing "The Great San Francisco Strike", but he volunteers that he might have, if he had been asked (5935). These specific instances faithfully reflect the forthright nature of his testimony: Errors he made, undoubtedly. But, as we have seen in analysis of the Waterfront Worker testimony (*supra*, pp. 28-9), those errors are the honest mistakes of a witness relying on a human memory rather than a prefabricated defense:¹¹²

(112) A minor point may be noted. A declaration of intention filed by the Alien in 1921 (Gov. Ex. 277) shows his birth date as July 28, 1899. A preliminary form for petition for naturalization and a declaration of intention filed by the Alien in 1928 (Gov. Ex. 278-9) show his date of birth as July 29, 1899, and July 28, 1899, respectively. The preliminary form, filed in 1928, shows the date of his marriage as December 2, 1923. A preliminary form for a declaration of intention and a declaration of intention, filed in 1936 and 1939, respectively, show his birth date as July 28, 1900 and his

Exhibit- "G"—(Continued.)

Heedful of all pertinent factors, we have weighed the evidence. That the conflict must be resolved in the Alien's favor, we think clear. It is found, therefore, that the dinner conversation as testified to by Lundeborg did not occur; that Darcy was not present at that occasion; and that Bridges made no admission of Communist Party membership.

III CONCLUSION

We find, therefore, that the evidence in this record does not establish that Harry Renton Bridges was at any time a member of or affiliated with any organization proscribed by statute.

FINDINGS OF FACT

Upon the basis of all the evidence in this case, it is found:

(1) That the respondent, Harry Renton Bridges, is an alien, a native and citizen of Australia;

(2) That the respondent has resided in the

date of marriage as May 1, 1934 (Gov. Ex. 296-7). Counsel did not choose to ascertain the reasons for the apparent variation in dates of birth and marriage. Apparently, there was nothing to be gained by conscious falsehood. The variations in date of birth may be the result of carelessness or doubt as to the exact date. The two widely separated dates of marriage are strongly suggestive of two marriage ceremonies. In any event, the worst possible inferences are not reflected in his testimony here.

Exhibit "G"—(Continued.)

United States since his arrival at the port of San Francisco in April 1920;

(3) That the respondent last entered the ~~United States~~ in September 1922;

(4) That after entering the United States, the respondent has not been a member of the Communist Party;

(5) That after entering the United States, the respondent has not been affiliated with the Communist Party;

(6) That after entering the United States, the respondent has not been a member of the Marine Workers Industrial Union;

(7) That after entering the United States, the respondent has not been affiliated with the Marine Workers Industrial Union;

(8) That the respondent was a member of the Industrial Workers of the World from about July 21, 1921 to the end of 1921 or early part of 1922;

(9) That during the time the respondent was a member of the Industrial Workers of the World, that organization did not advise, advocate or teach the unlawful damage, injury or destruction of property or sabotage;

(10) That during the time the respondent was a member of the Industrial Workers of the World, that organization did not circulate or distribute written or printed matter advising, advocating or teaching the unlawful damage, injury or destruction of property or sabotage.

Exhibit "G"—(Continued.)

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact, it is concluded that under the Act of October 16, 1918, as amended by the Acts of June 5, 1920 and June 28, 1940, the respondent is not subject to deportation on any of the following grounds—

(1) That after entering the United States, he has been a member of an organization, association, society or group that believes in, advises, advocates, or teaches the overthrow by force or violence of the Government of the United States;

(2) That after entering the United States he has been affiliated with an organization, association, society or group that believes in, advises, advocates, or teaches the overthrow by force or violence of the Government of the United States;

(3) That after entering the United States, he had been a member of an organization, association, society or group that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue or display written or printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States;

(4) That after entering the United States, he has been affiliated with an organization, association, society or group that writes, circulates, distributes, prints, publishes, or displays, or causes to be written,

Exhibit "G"—(Continued.)

circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue or display written or printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States;

(5) That after entering the United States, he became a member of an organization, association, society, or group that advised, advocated and taught the unlawful damage, injury, or destruction of property and sabotage;

(6) That after entering the United States, he became a member of an organization, association, society or group that circulated or distributed written or printed matter advising, advocating or teaching the unlawful damage, injury, or destruction of property and sabotage.

ORDER

The warrant of arrest and bond are cancelled and the proceedings closed. Execution of this order is stayed pending further order of the Attorney General or of this Board.

The foregoing is the unanimous opinion, findings and order of the Board; Board Member Ashurst not participating.

Chairman, Board of Immigration
Appeals

[Endorsed]: Filed June 2, 1942. Walter B.
Maling, Clerk.